



12-1-2003

## A Systemic Investigation: Developing a Guide to North Dakota Legal Research for the Educator and Citizen

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A SYSTEMIC INVESTIGATION: DEVELOPING A GUIDE TO  
NORTH DAKOTA LEGAL RESEARCH FOR THE EDUCATOR AND CITIZEN

by

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A Dissertation  
Submitted to the Graduate Faculty  
of the  
University of North Dakota  
in partial fulfillment of the requirements

for the degree of  
Doctor of Philosophy

Grand Forks, North Dakota  
December 2003

This dissertation, submitted by Rhonda R. Schwartz in partial fulfillment of the requirements for the Degree of Doctor of Philosophy from the University of North Dakota, has been read by the Faculty Advisory Committee under whom the work has been done and is hereby approved.

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This dissertation meets the standards for appearance, conforms to the style and format requirements of the Graduate School of the University of North Dakota, and is hereby approved.

Joseph D. Bennett  
Dean of the Graduate School

October 2, 2003  
Date

PERMISSION

Title                    A Systemic Investigation: Developing a Guide to North  
Dakota Legal Research for the Educator and Citizen

Department            Educational Leadership

Degree                  Doctor of Philosophy

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Signature Rhonda R. Schwartz

Date        September 2, 2003

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## ACKNOWLEDGMENTS

I wish to express my sincere appreciation to the members of my advisory committee, Dr. Kathy Gershman, Dr. Mary Kweit, Professor Randy Lee, Dr. Katrina Meyer, and a special thank you to the chair, Dr. Donald Lemon. I also would like to express my appreciation to the members of my doctoral cohort and to the members of the Thormodsgard Law Library staff. And finally, I would like to thank my family for their love and encouragement: my husband, Chuck, and our sons, Luke and Joel; my mother, Joan; and my sisters, Sharyl, Colleen and Romaine.

To my father, the late Raymond R. Schwartz

## ABSTRACT

Educators and citizens in North Dakota often need to research North Dakota law. They need to research primary authority materials (e.g., the North Dakota Constitution, the North Dakota Supreme Court opinions, the North Dakota Century Code, the North Dakota Administrative Code). Educators and citizens also need to utilize secondary authority materials that help them locate, update, explain or interpret the law (e.g., digests, citators, law reviews or treatises). There is no guide for North Dakota legal research materials that serves to help the educator or citizen in these research efforts.

The following methodology was used to produce a guide for North Dakota legal research. Legal research guides for the contiguous states (Minnesota, Montana, and South Dakota) and selected legal research monographs were reviewed. A rubric was applied to examine the following features in both the guides and the monographs: treatment of primary and secondary authority materials, treatment of finding tools and citators, and treatment of guide-specific or monograph-specific features (e.g., organizational structure of guide). In addition, selected education law monographs and periodicals were reviewed to discover which areas or topics of education law (e.g., student records, rights of the disabled) most commonly appear in the monographs and periodicals. Where applicable, those topics were included as illustrations in the guide, with North Dakota-specific examples utilized. Selected



legal research periodicals were also reviewed in order to ascertain recent scholarship about effective legal research. Online legal research via the Internet was conducted in order to provide illustrations of online accessibility to legal materials.

This study developed a guide to North Dakota legal materials. Further, the guide included North Dakota K-12 through higher education legal illustrations. The goal was to help the educator and citizen more effectively and efficiently utilize North Dakota legal resources.

## CHAPTER I

### INTRODUCTION

Knowledge: "If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be" (Thomas Jefferson in Lipscomb & Bergh, eds., 1903-04, p. 384).

Responsibility: "In the last analysis, my fellow countrymen, as we in America would be the first to claim, a people are responsible for the acts of their government" (Wilson. Address. Columbus, Ohio. 4 Sept., 1919).

Citizenship:

Never before has it been more important for higher education to claim its public purpose in preparing students for active participation in local, national, and global citizenship. Indeed, as John Dewey once said, "democracy needs to be reborn in each generation, and education is its midwife." Today, higher education has a particular opportunity to educate students in their democratic rights and responsibilities.

(Hollander, Saltmarsh & Zlotkowski, 2002, p. 1)

Knowledge. Responsibility. Citizenship. If one agrees with Dewey that every generation needs to give new birth to democracy, and further that education is the midwife, then helping to educate each generation about the rights and responsibilities of democracy remains essential labor.

The drafters of the North Dakota Constitution recognized the necessary relationship between education and a “government by the people” when they provided for a system of public schools:

A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.  
(N.D. Const. art. VIII, § 1)

Citizens and educators alike need knowledge about and access to the constitutions and laws that guarantee the rights they enjoy. They often need to conduct legal research about those particular areas of the law that impact their personal or professional lives. Citizens and educators might also need to conduct research when they are not certain what the law is on a particular issue (e.g., student rights, or due process rights of teachers, or the rights of disabled children).

Citizens and educators in North Dakota often need to research legal issues. However, there is no general guidebook for North Dakota legal research; there is no guide for the “systemic investigation” of the law. This study will produce a guide for North Dakota legal research, a guide illustrated with K-12 and higher education-related materials.

## Need for the Study

State specific guides for legal research are published on a regular basis. Iowa, an Eighth Circuit state like North Dakota, has just published a 2003 legal research guide (Edwards, 2003). North Dakota's contiguous states have also recently published new editions to earlier legal research guides: Minnesota (Tessner, Wolfe & Jackson, 2002), Montana (Jordan, 1998) and South Dakota (Jorgensen, 1999).

A review of the literature revealed that there was no comparable legal research guide for North Dakota. The authors of an annotated bibliography of state legal research guides wrote that they "could locate no legal research guides for North Dakota" (Deel & James, 1994, p. 62). The authors of a new edition of a legal research text found no North Dakota legal research guide to include in the text's Appendix B, State Guides to Legal Research, an appendix which included guides for 47 of the 50 states (Mersky & Dunn, 2002). North Dakota educators and citizens could utilize a guide that focuses specifically on North Dakota legal research and is illustrated with North Dakota K-12 and higher education-related materials.

## Purpose of the Study

The purpose of the study was to produce a legal research guide for North Dakota that could be utilized by educators and citizens. An additional purpose of the study was to illustrate the legal research guide with North Dakota education-related materials.

The study examined legal research guides from selected states, examined selected legal research and education law monographs and periodicals, and

conducted online legal research utilizing the Internet. The resulting legal research guide was designed to be useful for the educator or citizen who might, for example, need guidance in locating or updating a North Dakota Supreme Court case or need help in using the state statutes as codified in the *North Dakota Century Code*.

#### Delimitations

A delimitation of this study was that only selected state legal research guides were examined. A further delimitation was that although Internet legal research was utilized, neither LexisNexis nor Westlaw online research was utilized. The practicing attorney may subscribe to LexisNexis or Westlaw and the law student may have password access to both systems as well. However, the educator and general citizen most likely would not have access to either system and hence the exclusion. The study will show that there are now numerous Internet sites, accessible without a subscription fee or password access, that provide access to reliable, comprehensive legal research information.

#### Assumptions

An assumption made in this study was that educators and citizens possess varying degrees of ability to conduct legal research. The differences in ability reflect the diverse educational backgrounds and experiences that educators and citizens possess. This study will provide plain-language instructions on how to access various legal materials, helping to make the materials accessible to people at all education and ability levels.

## Definitions

Advance Sheets: "A softcover pamphlet containing recently reported opinions by a court or set of courts. Advance sheets are published during the interim between an opinion's announcement and its inclusion in a bound volume of law reports" (Garner, 1999, p. 53).

Annotation: "A brief summary of the facts and decision in a case, especially one involving statutory interpretation. A note that explains or criticizes a source of law, usually a case" (Garner, 1999, p. 88).

Authority: "A legal writing taken as definitive or decisive; especially a judicial or administrative decision cited as a precedent...Imperative authority, authority that is absolutely binding on a court, also termed binding authority [and mandatory authority]" (Garner, 1999, pp. 127-28).

Bill: "A legislative proposal offered for debate before its enactment" (Garner, 1999, p. 157).

Blackletter law: "One or more legal principles that are old, fundamental, and well settled" (Garner, 1999, p. 163).

Case: "A proceeding, action, suit, or controversy at law or in equity" (Garner, 1999, p. 206).

Case Law: "The collection of reported cases that form the body of law within a given jurisdiction" (Garner, 1999, p. 207).

Citation: "A reference to a legal precedent or authority, such as a case, statute, or treatise, that either substantiates or contradicts a given position" (Garner, 1999, p. 236).

Citator: "A book or section of a book containing tables of cases or statutes that have been judicially cited in later cases" (Garner, 1999, p. 237).

Code: "A complete system of positive law, carefully arranged and officially promulgated; a systematic collection or revision of laws, rules, or regulations" (Garner, 1999, p. 250).

Codification: "The process of compiling, arranging, and systematizing the laws of a given jurisdiction, or of a discrete branch of the law, into an ordered code. The code that results from this process" (Garner, 1999, p. 252).

Common Law: "The body of law derived from judicial decisions, rather than from statutes or constitutions" (Garner, 1999, p. 270).

Constitution: "The fundamental and organic law of a nation or state, establishing the conception, character, and organization of its government, as

well as prescribing the extent of its sovereign power and the manner of its exercise" (Garner, 1999, p. 306).

Decision: "A judicial determination after consideration of the facts and the law; especially a ruling, order, or judgment pronounced by a court when considering or disposing of a case" (Garner, 1999, p. 414).

Dictum: "A statement of opinion or belief considered authoritative because of the person making it. Judicial dictum [is] an opinion by a court on a question that is directly involved, briefed, and argued by counsel, and even passed on by the court, but that is not essential to the decision" (Garner, 1999, p. 465).

Digest: "An index of legal propositions showing which cases support each proposition; a collection of summaries of reported cases, arranged by subject and subdivided by jurisdiction and court" (Garner, 1999, p. 467).

Et seq.: "[Latin *et sequentes*] And those (pages or sections) that follow" (Garner, 1999, p. 574).

General jurisdiction: "A court's authority to hear a wide range of cases, civil or criminal, that arise within its geographic area" (Garner, 1999, p. 856).



Habeas corpus: "A writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal" (Garner, 1999, p. 715).

Jurisdiction: "A government's general power to exercise authority over all persons and things within its territory. A court's power to decide a case or issue a decree. A geographic area within which political or judicial authority may be exercised " (Garner, 1999, p. 854).

Law review: "A journal containing scholarly articles, essays, and other commentary on legal topics by professors, judges, law students, and practitioners. Law reviews are usually published at law schools and edited by law students" (Garner, 1999, p. 894).

Legal research: "The finding and assembling of authorities that bear on a question of law; the field of study concerned with the effective marshaling of authorities that bear on a question of law" (Garner, 1999, p. 907).

Legislative intent: "The design or plan that the legislature had at the time of enacting a statute" (Garner, 1999, p. 911).

Loose-leaf service: "A type of lawbook having pages that are periodically replaced with updated pages, designed to cope with constant change and increasing bulk" (Garner, 1999, p. 954).

Opinion: "A court's written statement explaining its decision in a given case, usually including the statement of facts, points of law, rationale, and dicta" (Garner, 1999, p. 1119).

Original jurisdiction: "A court's power to hear and decide a matter before any other court can review the matter" (Garner, 1999, p. 856).

Original writ: "A writ commencing an action and directing the defendant to appear and answer" (Garner, 1999, p. 1602).

Persuasive Authority: "Authority that carries some weight but is not binding on a court" (Garner, 1999, p. 128).

Plenary power: "Power that is broadly construed; especially, a court's power to dispose of any matter properly before it" (Garner, 1999, p. 1189).

Pocket Part: "A supplemental pamphlet inserted usually into the back inside cover of a lawbook, especially a treatise or code, to update the material in the main text until the publisher issues a new edition of the entire work" (Garner, 1999, p. 1177).

Primary Authority: "Authority that issues directly from a law-making body; legislation and the reports of litigated cases" (Garner, 1999, p. 129).

Procedural law: "The rules that describe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves" (Garner, 1999, p. 1221).

Remand: "To send (a case or claim) back to the court or tribunal from which it came for some further action" (Garner, 1999, p. 1296).

Report: "A written account of a court proceeding and judicial decision....A published volume of judicial decisions by a particular court or group of courts....A collection of administrative decisions by one or more administrative agencies" (Garner, 1999, p. 1303).

Secondary Authority: "Authority that explains the law but does not itself establish it, such as a treatise, annotation, or law-review article" (Garner, 1999, p. 129).

Session Laws: "A body of statutes enacted by a legislature during a particular annual or biennial session" (Garner, 1999, p. 1376).

Slip Law: "An individual pamphlet in which a single enactment is printed immediately after its passage but before its inclusion in the general laws" (Garner, 1999, p. 1393).

Slip Opinion: "A court opinion that is published individually after being rendered and then collectively in advance sheets before being released for publication in a reporter" (Garner, 1999, p. 1119).

Stare decisis: "The doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation" (Garner, 1999, p. 1414).

Statute: "A law passed by a legislative body" (Garner, 1999, p. 1420).

Statutes at Large: "An official compilation of the acts and resolutions that became law from each session of Congress, printed in chronological order" (Garner, 1999, p. 1423).

Statutory construction: "The act or process of interpreting a statute; collectively, the principles developed by courts for interpreting statutes" (Garner, 1999, p. 1424).

Substantive law: "The part of the law that creates, defines, and regulates the rights, duties, and powers of parties" (Garner, 1999, p. 1443).

Supersede: "To annul, make void, or repeal by taking the place of" (Garner, 1999, p. 1452).

Writ: "A court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act" (Garner, 1999, p. 1602).

### Organization of the Study

Chapter I presents an introduction to the study. Chapter II discusses the methodology used in the study, the procedures used and the corresponding rationale. Chapters III through XI is the guide itself, the guide to North Dakota legal research, illustrated throughout with education-related materials. More specifically, Chapter III includes a broad discussion of the sources and origin of the law and an introduction to the guide. Chapter IV discusses secondary sources, including the North Dakota Law Review, encyclopedias, treatises, and loose-leaf services. Chapter V discusses primary authority materials, specifically the North Dakota Constitution. Chapter VI continues with primary authority materials, focusing on North Dakota legislation. Chapter VII concentrates on North Dakota court opinions. Chapter VIII addresses the North Dakota rules of court. Chapter IX focuses on North Dakota administrative regulations and opinions. Chapter X continues with professional conduct and ethics opinions. Chapter XI addresses Attorney General opinions. And finally, Chapter XII concludes the study and offers discussion and recommendations.

## CHAPTER II

### METHODOLOGY

Professor Charles Russo, J.D., Ed.D., a former member of the Board of Directors of the National Organization on Legal Problems of Education (an organization now known as the Education Law Association), wrote about the nature of legal research: “Systemic inquiry in the law can be described as a form of historical-legal research that is neither qualitative nor quantitative. In other words, it is a systemic investigation involving the interpretation and explanation of the law” (Schimmel, Ed., 1996, p. 34).

Several steps were undertaken in this inquiry to determine what a legal research guide for North Dakota, a guide illustrated with education-related materials, should optimally include: legal research guides from contiguous states were reviewed; legal research and education law monographs were consulted; legal research and education law periodicals were consulted; and online legal research via the Internet was conducted. Each procedure is discussed below, along with the corresponding rationale. In addition, the strategy employed to select the education-related illustrations for the legal research guide is discussed.

#### Legal Research Guides from Contiguous States Review

##### *Contiguous States: Procedure*

Legal research guides from Minnesota (Tessner, Wolfe & Jackson, 2002), Montana (Jordan, 1998), and South Dakota (Jorgensen, 1999) were examined to

discover what features, if any, they had in common; to determine what strengths and weaknesses they might contain; and, ultimately, to incorporate those features considered to be most helpful into the North Dakota legal research guide.

More specifically, a rubric was applied to examine the following features and their treatment in the three guides:

Primary Authority Materials (e.g., constitutions, court opinions, legislation, administrative regulations and opinions, and rules of court);

Secondary Authority Materials (e.g., treatises, law reviews, legal periodicals, legal encyclopedias, and loose-leaf services);

Finding Tools Materials (e.g., digests and indices);

Guide-Specific Features (e.g., presence and arrangement of chapters; table of contents; bibliography; glossary; discussion of origin of laws).

#### *Contiguous States: Rationale*

Three states share a border with North Dakota: Minnesota, Montana, and South Dakota. Attorneys practicing in North Dakota might also be licensed in a bordering state or states. (The same attorneys might also be licensed in noncontiguous states or in federal courts.) Although the North Dakota legal research guide was not aimed exclusively at practicing attorneys, as was explained in the Purpose of Study, it was nevertheless instructive to examine the guides that attorneys may be consulting when conducting research about bordering states' laws. Resources that attorneys utilize may also be of use to the educator and citizen.

Citizens using a state legal research guide might themselves have an interest in the law of a bordering state or states. Citizens might own a home or a business in a bordering state and may wish to research relevant state law. In addition, educators might collaborate with bordering states on educational issues and may also wish to research relevant state law.

### Legal Research Monographs Consultation

#### *Research Monographs: Procedure*

The following legal research monographs were consulted:

*Basic Legal Research: Tools and Strategies*, 2nd ed. (Sloan, 2003);

*Finding the Law* (Berring & Edinger, 1999);

*Fundamentals of Legal Research*, 8th ed. (Mersky & Dunn, 2002);

*Legal Research Illustrated*, 6th ed. (Jacobstein, Mersky & Dunn, 1994);

*Legal Research in a Nutshell*, 7th ed. (Cohen & Olson, 2000);

*The Process of Legal Research*, 5th ed. (Kunz, Schmedemann, Downs & Bateson, 2000).

As with the state legal research guides, a rubric was applied to examine the following features and their treatment in the legal research monographs:

Primary Authority Materials (e.g., constitutions, court opinions, legislation, administrative regulations and opinions, and rules of court);

Secondary Authority Materials (e.g., treatises, law reviews and legal periodicals, legal encyclopedias, and loose-leaf services);

Finding Tools Materials (e.g., digests and indices);

Monograph-Specific Features (e.g., presence and arrangement of chapters, table of contents, bibliography, glossary, discussion of origin of the law).



### *Research Monographs: Rationale*

The decision of which legal research monographs to review was aided by two surveys, one specifically on law school legal research text selection (Shear & Browne, 2001), and one on advanced legal research law school courses (Hemmens, 2002). Where the surveys pointed to different editions of the same monograph, the most recent edition was consulted.

Shear and Browne (2001) asked subscribers of two listservs, LAW-LIB (law librarians online discussion list) and LEGWRI-L (legal writing instructors online discussion list), which legal research texts the subscribers used and why. From a total of 30 responses, the following texts received multiple recommendations for use in first-year courses or advanced legal research classes:

*Basic Legal Research* (Sloan, 2000) was used by the greatest number of respondents. Eight respondents used the text in first-year programs; three more respondents planned to use the text in first-year programs the following year.

*The Process of Legal Research* (Kunz, Schmedemann, Downs, & Bateson, 2000) was used by many respondents [no specific number given] although some considered using the Sloan text the following year.

*Fundamentals of Legal Research* (Jacobstein, Mersky, & Dunn, 1998) was used in three first-year programs and in one advanced legal research class as the text and in another advanced legal research class as a supplementary text.

*Finding the Law* (Berring & Edinger, 1999) was used in two first-year programs and in two advanced legal research classes.

*Legal Research in a Nutshell* (Cohen & Olson, 2000) was used in two first-year programs and in one advanced legal research class.

*Legal Research: A Practical and Self-Instructional Workbook* (McKinney, 2000) was used by one respondent.

*Winning Research Skills* (Johnson, Berring & Woxland, 1999) was used by two respondents, one of whom specified a first-year program.

All of the texts in the Shear and Browne (2001) survey above were consulted for this study except for the last two (the McKinney workbook and the Johnson, Berring and Woxland text) which were used by two or fewer respondents.

Hemmens (2002) sent surveys to the law library directors of the 181 law schools accredited by the American Bar Association; one hundred and eleven surveys were returned for a 61% response rate. Fifty-one schools (73.9%) responded on the particular question about which texts were used in advanced legal research courses. The response revealed two leading texts and eight other texts, the last four of which received one response each (Hemmens, 2002). The texts, with the number of responses received shown in parentheses, were:

*Fundamentals of Legal Research* (Jacobstein, Mersky & Dunn, 1998) (16);

*Finding the Law* (Berring & Edinger, 1999) (14);

*The Process of Legal Research* (Kunz, Schmedemann, Downs & Bateson, 1996) (7);

*Legal Research Illustrated: An Abridgement of Fundamentals of Legal Research* (Jacobstein & Mersky, 1990) (5);

*How to Find the Law* (Cohen, Berring & Olson, 1989) (4);

*Legal Research in a Nutshell* (Cohen & Olson, 1996) (4);

*The Internet: The Rough Guide* (Kennedy, 1998) (1);

*The Lawyer's Research Companion: A Concise Guide to Sources* (Zich & McCann, Eds., 1998) (1);

*Legal Research Exercises* (Johnson & Phillips, 1999) (1);

*Winning Research Skills* (Johnson et al., 1999) (1).

All of the texts in the Hemmens (2002) survey above were consulted for this study except for the last four in the list, each of which received only one response. And again, where the surveys pointed to different editions of the same monograph, the most recent edition was consulted for this study.

#### Education Law Monographs Review

##### *Education Law Monographs: Procedure*

The North Dakota legal research guide was written as a guide for educators and citizens, illustrated with education-related materials. Education law monographs were reviewed in order to determine which areas of education law (e.g., search and seizure, student records, teacher dismissal) commonly appeared in the selected education law monographs. Where applicable, those topics were then included as illustrations in the North Dakota legal research guide, with North Dakota-specific statutes and cases utilized.

##### *Education Law Monographs: Rationale*

The decision of which education law monographs to review was guided by an education law texts usage survey (Sullivan & Zirkel, 1998). The survey included both professors of education law who were members of the Education Law Association (ELA) and the ELA membership-at-large. The survey revealed that almost half (45%) used the Alexander & Alexander textbook, *American Public*

*School Law* (Sullivan & Zirkel, 1998). Other texts, required or strongly suggested in school law courses, are shown with percent of usage in parentheses:

*Public School Law* (Mccarthy & Cambron-McCabe) (18%);

*School Law: Cases and Concepts* (LaMorte) (16%);

*The Law of Public Education* (Reuter & Hamilton) (16%);

*Teachers and the Law* (Fischer, Schimmel, & Kelly) (14%);

*Education Policy and the Law* (Yudof, Kirp, & Levin) (10%);

*Law and Education* (Hudgins & Vacca) (9%);

*Education Law* (Imber & Van Geel) (9%);

*Law in the Schools* (Valente & Valente) (6%);

*Education Law and the Public Schools* (Sperry, Daniel, Huefner, & Gee) (6%);

*Law of School Students and Teachers in a Nutshell* (Alexander & Alexander) (4%);

*Meeting Legal Challenges* ( Beckham) (2%);

*The Constitution and American Public Education* (Morris) (2%);

and various state handbooks (20%).

Because the Alexander and Alexander text was used by such a high percentage of respondents in the Sullivan and Zirkel (1998) survey, that text was reviewed most closely. Other texts from the survey above that were the most readily available to the author and were also consulted include the LaMorte text, the Yudof text, the Imber text, and the Valente text.

Legal Research Periodicals Review

*Legal Research Periodicals: Procedure*

Periodicals that concentrate in or have a strong component of legal research were reviewed to discover what scholars are currently writing about in the area of legal research. In order to concentrate on the most recent scholarship, the search was limited to 1998 through the current year.

The Subject and Author Index in the *Index to Legal Periodicals & Books* was used, employing the following subject terms: legal research, legal education, law curriculum, law teaching, bibliography, and North Dakota. In addition, the Table of Cases index in the *Index to Legal Periodicals & Books* was used to search for North Dakota cases to use as illustrations in the guide.

Included among the journals that were reviewed were the following: *Law Library Journal*, *Journal of Legal Education*, and *Legal Reference Services Quarterly*.

#### *Research Periodicals: Rationale*

In preparing a legal research guide for North Dakota, it was necessary to examine recent scholarship in the area of legal research. The *Index to Legal Periodicals & Books* indexes approximately 850 law reviews, legal periodicals, and government publication per year. In addition, 1400 monographs are indexed per year. The *Index to Legal Periodicals & Books* was thus an excellent source for finding references to recent scholarly articles, symposia, and book reviews.

#### Education Law Periodicals Review

#### *Education Law Periodicals: Procedure*

Periodicals that specialize in education law were reviewed to discover recent scholarship in the area of education law and legal research. As with the legal research periodicals, the search was limited to 1998 through the current year.

The Subject and Author Index in the *Index to Legal Periodicals & Books* was used, employing the following subject terms: education, colleges and universities, right to education, school and school districts, student speech, teachers and teaching.

Included among the education law journals that were reviewed were the *Journal of College and University Law*, which addresses higher education law issues and the *Journal of Law and Education*, which addresses school law issues.

#### *Education Law Periodicals: Rationale*

In preparing a legal research guide for North Dakota that was illustrated with education-related cases and statutes, it was important to examine recent scholarship in the area of education law. Because the *Index to Legal Periodicals & Books* indexes approximately 850 periodicals and 1400 books per year, the *Index* was an indispensable tool in locating current references to education law materials.

#### Online Legal Research via the Internet

##### *Research via Internet: Procedures*

A guidebook to North Dakota legal research, to be current, must include an online research component. Internet sites for both federal and state (North Dakota) materials were researched, but the emphasis was on the North Dakota sites. The chapters in this study that correspond to the state sites are provided in brackets after the North Dakota websites listed below.

Federal constitution: Retrieved April 22, 2003, from

<http://www.access.gpo.gov/congress/senate/constitution/index.html>.

State constitution: Retrieved April 22, 2003, from  
<http://www.state.nd.us/lr/information/statutes/const-laws.html>.  
[Chapter V: North Dakota Constitution]

Federal legislation: Retrieved April 22, 2003, from  
<http://www.access.gpo.gov/congress/cong013.html>.

State legislation: Retrieved April 22, 2003, from  
<http://www.state.nd.us/lr/information/statutes/cent-code.html>.  
[Chapter VI: North Dakota Legislation]

Federal court opinions: Retrieved April 22, 2003, from  
<http://www.supremecourtus.gov/opinions/opinions.html>.

State court opinions: Retrieved April 22, 2003, from  
<http://www.court.state.nd.us/Court/Opinions.htm>.  
[Chapter VII: North Dakota Case Law]

Federal rules of court: Retrieved April 22, 2003, from  
<http://www.supremecourtus.gov/ctrules/ctrules.html>.

State rules of court: Retrieved April 22, 2003, from  
<http://www.court.state.nd.us/Court/Rules/FrameSet.htm>.

[Chapter VIII: North Dakota Rules]

Federal administrative regulations: Retrieved April 22, 2003, from  
<http://www.access.gpo.gov/nara/cfr>.

State administrative regulations: Retrieved April 22, 2003, from  
<http://www.state.nd.us/lr/information/rules/admincode.html>.

[Chapter IX: North Dakota Administrative Law]

*Research via Internet: Rationale*

The practicing attorney often conducts online legal research and may subscribe to LexisNexis or to Westlaw, two online fee-based legal research systems. Similarly, the law student may have password access to both LexisNexis and Westlaw. However, the educator and citizen would be much less likely to have access to either fee-based service. The educator and citizen would be more likely to have access to the Internet and hence be able to conduct legal research via the Internet.

The Internet is a powerful tool that supplements traditional sources of legal research and increases the researcher's chances of locating needed information. The Internet provides users with a growing wealth of easily accessible information available in a cost-effective manner, and provides information not available through traditional online services, such as Westlaw and LexisNexis. For example, some legal materials, such as city or county ordinances, are only accessible through the web. (Mersky & Dunn, 2002, p. 561)



## Strategy Employed for Selection of Education-Related Illustrations

Chapters III through XI comprise the guide to North Dakota legal research, a guide illustrated throughout with education-related materials. The following factors were considered in selecting the illustrations:

Both K-12 and higher education materials were selected, in equal proportion when possible. The selection of topics (e.g., school attendance, student rights) was principally influenced by the Alexander and Alexander text, *American Public School Law*.

The emphasis was on current materials, from 1998 to the present. However, important exceptions were made. Landmark cases, for example, were included where appropriate, as were earlier law review articles, annotations, etc. of continuing interest.

CHAPTER III  
NORTH DAKOTA LEGAL RESEARCH GUIDE

Sources of Law

As an introduction to the process of legal research, it may be helpful to first look very briefly at the sources of law. The American legal system is part of the common law tradition.

The common law is the body of law that originated and developed in England and spread to those countries that England settled or controlled. Historically, the common law was considered to be the “unwritten law” and was distinguished from the “written,” or statutory law. The common law was an oral tradition derived from general customs, principles, and rules handed down from generation to generation and was eventually reflected in the reports of the decisions of the courts. The English common law arrived in America with the colonists who used it as a basis for developing their own law and legal institutions. (Mersky & Dunn, 2002, pp. 2-3)

Sir William Blackstone’s landmark work, *Commentaries on the Laws of England* (1765-69), consolidated the English common law into a unified system presented in four books: Rights of Persons, Rights of Things, Of Private Wrongs, and Of Public Wrongs. *Commentaries on the Laws of England* is available at the following ODIN libraries and institutions: Grand Forks Public Library, Minot

State University, North Dakota Supreme Court Library, University of North Dakota Chester Fritz Library, and the University of North Dakota School of Law.

As America expanded and developed, so also did the law. There was a movement toward statutory law.

The growth of statutory law reflected the impact of the industrial revolution, as it became apparent that a jurisprudence based only on judicial decisions could not meet the needs of a growing, dynamic society. Situations developed in which answers were needed that were not found in court reports, or the answers found in court reports either no longer met current needs, or resulted in actions that were considered unjust.

(Mersky & Dunn, 2002, p. 7)

Today, there is a recognition of the dynamic roles that both the judiciary and the legislature perform in the American legal system.

[T]he swing from common law to statute law, well advanced now in both Britain and America, does not destroy the role of the judges, and probably increases their work load. Applying a statute to the facts of a case turns out to be no less challenging than applying a rule of common law.....Today, then, the rules of law come from constant interplay between judges and legislatures. It seems an excellent answer to the old jurisprudential question about the source of the law. Unfortunately, the job of getting the machine to work smoothly has not yet been accomplished....The legal structure still changes only in response to crisis: lawyers and judges, like laymen, are forever crying that there ought to be a law. (Mayer, 1966, pp. 134-37)

## Legal Research and Sources of Law

Looking at the process of legal research and sources of law, sources of law can refer to three different concepts.

In one sense, the term sources of law refers to the origins of legal concepts and ideas. Custom, tradition, principles of morality, and economic, political, philosophical, and religious thought may manifest themselves in law....The term sources of law can also refer to governmental institutions that formulate legal rules....Because all three branches of government “make law” and create legal information that is the subject of legal research, researchers must understand the types of information created by each branch. Finally, sources of law can refer to the published manifestations of the law. The books, electronic databases, microforms, optical disks, and other media that contain legal information are all sources of law. (Mersky & Dunn, 2002, pp. 1-2)

The guide to North Dakota legal research is primarily concerned with the third type of legal resources, the “published manifestations of the law.” The guide is organized into chapters that identify and explain key resources to utilize when conducting legal research. The resources are illustrated with K-12 and higher education-related materials. The chapters are: Secondary Sources; North Dakota Constitution; North Dakota Legislation; North Dakota Case Law; North Dakota Rules; North Dakota Administrative Law; Professional Conduct and Ethics Opinions; and North Dakota Attorney General Opinions.

## Secondary Authority Sources

The guide begins with secondary authority sources, resources that help explain the law to the researcher and help the researcher locate the law, but are not the law itself. For example, the educator might consult a recent issue of the *Journal of Law & Education* to read an article about school choice (Ira Bloom, *The New Parental Rights Challenge to School Control: Has the Supreme Court Mandated School Choice?* 32 J.L. & Educ. 139 (2003)). The article not only helps explain the topic, school choice, but also points the educator to other secondary resources about the topic and to court cases and statutes, primary authority resources, about the topic.

Similarly, a higher education administrator might consult a recent issue of *The Journal of College and University Law* for information about the Family Educational Rights and Privacy Act (FERPA) and foreign students (Laura Khatcheressian, *FERPA and the Immigration Service: A Guide for University Counsel on Federal Rules for Collecting, Maintaining and Releasing Information About Foreign Students*, 29 J.C. U.L. 457 (2003)). This article provides the administrator or university counsel with timely information about the topic, FERPA and foreign students, and also provides references to federal statutes and regulations, primary authority resources.

## Primary Authority Sources

Primary authority sources are sources that contain the law itself. Primary authority sources in the guide include the North Dakota Constitution, the North Dakota Century Code, the North Dakota Supreme Court opinions, the North Dakota Administrative Code, and North Dakota Rules (which includes, among

other rules, the North Dakota Rules of Professional Conduct and the North Dakota Rules for Lawyer Discipline). The State Bar Association of North Dakota ethics opinions and the North Dakota Attorney General opinions are advisory opinions only. These opinions are not the primary authority of the law, but rather, as explained in their respective chapters, provide advice for the attorney, educator, or citizen.

Authority, primary or secondary, can refer not only to the types or sources of information described above, but can also refer to persuasiveness.

When the term is used to describe the degree of persuasiveness of legal information, authority is an estimation of the power of information to influence a legal decision. In this sense, authority can be termed *binding* (also called *mandatory*), meaning that a court or other decision-maker believes the authority applies to the case before it and must be followed; or authority can be considered persuasive, meaning that a decision-maker can, if so persuaded, follow it. Only primary authority can be binding...Secondary authority can never be binding, but can be persuasive. (Mersky & Dunn, 2002, p. 2)

### Beginning the Legal Research Process

The guide to North Dakota legal research examines a wide variety of resources. The educator or citizen may wonder where to begin the process, which resources to consult first, and whether or not *all* the resources must be consulted in every instance.

Legal research is not a linear process. Most research projects do not have an established series of steps that must be followed sequentially until the

answer to your question is uncovered. Although there are certain steps that you will ordinarily take with any research project, the starting, middle, and ending points will vary. When you know little or nothing about the issue you are researching, you will begin your research differently than if you were working on an issue about which you already have substantial background knowledge. (Sloan, 2003, p. 6)

If the educator has limited knowledge about a certain topic (e.g., transportation of students and tort liability or higher education resident tuition), and would like to further understand the topic, then the researcher might begin with a legal encyclopedia, the *Corpus Juris Secundum*. If the educator has some knowledge about the topic, but wants to develop a greater understanding, the researcher might begin by reading an annotation article in the *American Law Reports*. If the educator wants to know what the state law provision is on a particular topic, the researcher might begin by consulting the state statutes, the *North Dakota Century Code*. After reading the law in the *North Dakota Century Code*, the researcher might continue to study the topic by reading a journal article in the *North Dakota Law Review*. The researcher might instead have a cite to a particular North Dakota Supreme Court case and want to read the case in a reporter, in the *North Western Reporter*, for example. After reading the case, the researcher might consult a citator, the *Shepard's North Dakota Citations*, to see if the case has been overruled by another case. In addition, the researcher might also consult a digest, the *West's Education Law Digest*, to locate additional cases on the topic.

Not all of the available resources are consulted in every instance. The resources consulted vary according to the information and knowledge the educator or citizen has when the research project begins and depend on what additional information is needed to satisfy the search.

#### Online Dakota Information Network

The Online Dakota Information Network (ODIN) is a library system website that provides access to the online catalogs of numerous libraries throughout North Dakota. Several types of libraries participate in ODIN: public colleges and universities (e.g., Williston State College and the University of North Dakota); private colleges (e.g., Jamestown College); public libraries (e.g., Fargo Public Library); school libraries (e.g., Dickinson High School); hospital libraries (e.g., Altru Medical Library); and special libraries and state agencies (e.g., North Dakota Supreme Court Library and the State Historical Society of North Dakota).

The resources discussed in the following chapters are often available at one or more of the libraries in the ODIN system. A system-wide search of all the libraries in ODIN will reveal which libraries have, for example, the *North Dakota Century Code* or the *North Dakota Law Review*. A researcher must search the online catalog of the individual library, however, to reveal the holdings of each individual library. In other words, a system-wide ODIN search will reveal which libraries have the *North Dakota Law Review* and an individual library search will reveal which particular volumes or issues (the holdings) of the *North Dakota Law Review* are held, for example, by the University of North Dakota



Thormodsgard Law Library. ODIN provides user-friendly online instructions to help the researcher perform the desired searches.

ODIN is available online. Retrieved May 20, 2003, from the Online Dakota Information Network: <http://www.odin.nodak.edu>.

### Frequently Used Abbreviations and Symbols

The following abbreviations and symbols, common in legal resources, are used throughout the guide.

A.B.A.	American Bar Association
A.L.R.	American Law Reports
C.J.S.	Corpus Juris Secundum
Dak. D.	Dakota Digest
Ed. Law Rep.	Education Law Reporter
N.D.	North Dakota Reports
N.D.A.C.	North Dakota Administrative Code (also N.D. Admin. Code)
N.D.C.C.	North Dakota Century Code (also N.D. Cent. Code)
N.D.L.R.	North Dakota Law Review (also N.D. Law Rev.)
N.D. Op. Att'y Gen.	North Dakota Opinion of the Attorney General
N.W.	North Western Reporter
N.W. 2d	North Western Reporter, Second Series
S.B.A.N.D.	State Bar Association of North Dakota
¶	Paragraph
§	Section
§§	Sections

## CHAPTER IV

### SECONDARY SOURCES

#### Introduction to Secondary Sources

In later chapters, primary sources of the law are discussed. Primary sources are “authoritative statements of legal rules by governmental bodies” (Mersky & Dunn, 2002, p. 10). Primary sources include the North Dakota Constitution, the North Dakota Supreme Court opinions, the North Dakota Century Code, the North Dakota Administrative Code, and the North Dakota rules of court. Secondary sources of the law, in contrast to primary sources, are not the legal rules themselves, but rather are materials used to explain and locate the law.

Secondary sources include a wide variety of materials, including legal periodicals, legal encyclopedias, annotations, treatises and loose-leaf services. Secondary source materials are “materials about the law that are used to explain, interpret, develop, locate, or update primary sources” (Mersky & Dunn, 2002, p. 10). In addition, secondary sources “often provide narrative explanations of complex concepts that would be difficult for a beginning researcher to grasp thoroughly simply from reading primary sources” (Sloan, 2003, p. 25).

Law reviews are a good example of secondary sources that provide the “narrative explanations of complex concepts” to which Sloan (2003) referred. The North Dakota educator, wanting to learn more about student free speech

issues, would likely utilize at least two primary sources of the law: the First Amendment to the U.S. Constitution and U.S. Supreme Court opinions. Using the primary sources, the educator could read the First Amendment and could read what the court said, for example, in *Tinker v. Des Moines Indep. Community Sch. Dist.* (1969). However, if the North Dakota educator desired a further explanation of student free speech issues, the educator could also read a law review article written by North Dakota Supreme Court Justice Maring on that very topic, as illustrated below.

### Legal Periodicals

The first broad category of secondary sources considered is legal periodicals. A legal periodical is a “secondary source that provides commentary on a range of legal topics over a period of time” (Kunz, Schmedemann, Downs & Bateson, 2000, p. 68). Legal periodicals are generally classified into five types: law reviews published by law schools, journals published by bar associations, subject-specific journals (often commercially published), legal newspapers, and legal newsletters (Mersky & Dunn, 2002). Three types of North Dakota legal periodicals are examined more fully below.

#### *Law Review Published by Law School: The North Dakota Law Review*

Periodical articles published by law schools are referred to as “law review or journal articles” (Sloan, 2003, p. 32). The periodical itself, published by a law school, is “most often called a ‘review,’ although ‘journal’ is also widely used, e.g., Harvard Law Review, Michigan Law Review, Yale Law Journal. The two terms are used interchangeably” (Mersky & Dunn, 2002, p. 364).

Law reviews typically consist of at least two main sections:

The first section consists of articles on various topics, usually written by law professors and occasionally by practitioners or academics from other disciplines. These articles are typically lengthy, scholarly in nature, and may have a substantial impact in changing the law or in charting the course for newly developing fields of law. (Mersky & Dunn, 2002, p. 364)

The second section, usually containing Notes and Comments, is written by law students. Notes critically assess current legal topics. Case Comments analyze recent court cases or recent legislation.

The *North Dakota Law Review* is published quarterly by the University of North Dakota School of Law. Regular sections of the *North Dakota Law Review* include articles, Notes, Case Comments, the North Dakota Supreme Court Review (brief summaries of important decisions in the previous year), and the proceedings of the annual meeting of the State Bar Association of North Dakota.

*North Dakota Law Review* issues often contain articles of interest for the educator. North Dakota Supreme Court Justice Mary Muehlen Maring wrote an article for the 1998 *North Dakota Law Review*. The article provided the historical background of student speech and First Amendment law, tracing its development from *Tinker v. Des Moines Indep. Community Sch. Dist.* (1969) to *Hazelwood Sch. Dist. v. Kuhlmeier* (1988). Justice Maring concluded:

Since the *Tinker* decision, the Supreme Court has progressively narrowed student's First Amendment rights to freedom of expression in public schools. Seemingly, once student expression falls outside the category of political speech, school administrators are given broad authority to look away from the effect of student expression and instead to regulate based

on the content of the expression. (Justice Mary Muehlen Maring, “‘Children Should be Seen and Not Heard’: Do Children Shed Their Right to Free Speech at the Schoolhouse Gate?” 74 N. D. L. Rev. 679, 689 (1998))

Another First Amendment issue of interest to educators appeared in a *North Dakota Law Review* article about student-on-student sexual harassment written by law professor Kay P. Kindred. Kindred concluded:

While school districts may be held financially liable for failing to stop known peer-on-peer sexual harassment, school officials have more than just the fear of financial liability to motivate their efforts to prevent sexual harassment within their institutions. Sexual harassment chills the learning environment and subverts the very purpose of the educational institution....[S]chool administrators must seek to strike a balance between the need to maintain order and the obligation to respect the right of student freedom of expression. If that balance can be achieved, schools will provide their students equal access to an environment conducive to learning, safeguard the students in their charge, and in the process, provide them with a lesson on democratic values more powerful than that in any civics textbook. (Kay P. Kindred, “When Equal Opportunity Meets Freedom of Expression: Student-On-Student Sexual Harassment and the First Amendment in School,” 75 N. D. L. Rev. 205,239-240 (1999))

The educator or citizen (or perhaps parent) wanting to learn more about what services can be requested under the Individuals with Disabilities Education Act (IDEA) could read a case comment in a recent issue of the *North Dakota Law Review*. In the comment, author Erin Diaz stated the facts of a specific case,

“Garret F,” and provided an analysis of both the majority opinion and the dissent. Diaz also provided legal background on the IDEA, set out the case development and interpretation of the IDEA since 1982, and discussed the impact of the case, including the impact the case might have in North Dakota:

Section 15-59-02.1 of the North Dakota Century Code states the specific intent of the legislature and the relationship of the statute with IDEA. In conjunction with this chapter, the legislature also noted in section 15-59-05.2 of the North Dakota Century Code that inter-agency cooperative agreements will be used to provide education-related services to disabled students. Therefore, in North Dakota, in addition to the federal funding provided via the IDEA, state agencies such as the state department of human services and the state department of health are affected by the ruling in Garret F. This is just one example of the broad impact that the Supreme Court’s ruling in Garret F. will have on the future of special education funding in North Dakota. (Erin M. Diaz, “United States Supreme Court Adopts ‘Bright Line’ Test for Determining Whether a Requested Service is a Required ‘Related Service’ Under the Individuals with Disabilities Education Act, Cedar Rapids Community School District v. Garret F., 526 U.S. 66 (1999),” 76 N. D. L. Rev. 385,409 (2000))

The *North Dakota Law Review* is available at the following libraries or institutions: Lake Region State College, Minot State University, North Dakota State College of Science, North Dakota State Library, North Dakota State University, North Dakota Supreme Court Library, University of North Dakota Chester Fritz Library, University of North Dakota Thormodsgard Law Library,

and Valley City State University. Consult the Online Dakota Information Network (ODIN) catalog for specific volumes as holdings vary from library to library. ODIN is available online at <http://www.odin.nodak.edu>. The Table of Contents of the North Dakota Law Review from 1995 to the present is also available online at <http://www.law.und.nodak.edu/NDLR/home.html>.

*Bar Association Journal: The Gavel*

Bar association publications often serve several purposes: "to inform the membership of the association's activities, to comment on pending and recent legislation, and to review current local court cases" (Mersky & Dunn, 2002, p. 367). *The Gavel* is a journal published quarterly by the State Bar Association of North Dakota (SBAND).

Regular features of *The Gavel* have included reports from SBAND presidents, a SBAND calendar of events, articles of interest written by attorneys and justices, continuing legal education schedules, a North Dakota Supreme Court opinions highlight section, a section of summaries of recent American Bar Association and SBAND ethics opinions, and a discipline section of actions concerning North Dakota attorneys, e.g., reprimands issued, suspensions ordered.

Commencing with the June/July 2000 issue, *The Gavel* began a Significant Cases Series of articles written by attorneys about noteworthy North Dakota Supreme Court cases within the past five years (later changed to cases within the last decade). Significant cases in constitutional law, oil and gas law, and insurance law appeared in the first series. Later issues included significant cases in domestic relations law, real property law, criminal law, administrative law,

tort law, and civil litigation. The later two series, tort law (June/July 2001 issue) and civil litigation (December 2001 issue) both included *Reed v. University of North Dakota* (1999) as a significant North Dakota Supreme Court case.

Reed, a University of North Dakota student and hockey player, was severely dehydrated when he took part in a race. Reed sued the University of North Dakota, several of the coaches, and the organization that sponsored the 10K race, alleging that there was not adequate water or medical care available. Although the University of North Dakota had made inquiries about the extent to which water and medical care would be available during the race and was generally aware of the sponsor's planning of the race, there was no evidence that the University of North Dakota and the race sponsors acted together with any common plan necessary for an "in concert" action as provided for in *North Dakota Century Code* § 32-03.2-02 ("Modified comparative fault"). The North Dakota Supreme Court held that the University was not jointly liable for any negligence attributable to the sponsors of the race.

*The Gavel* is available at the following libraries or institutions: Bismarck State College, Lake Region State College, North Dakota State Library, North Dakota Supreme Court Library, and the University of North Dakota Thormodsgard Law Library. Consult the Online Dakota Information Network (ODIN) catalog for specific issues as holdings vary from library to library. ODIN is available online at <http://www.odin.nodak.edu>. The December 2001 and May 2002 issues of *The Gavel* are available online at <http://www.sband.org/Gavel>.



### *Legal Newsletter: Notepad*

Newsletters are another type of legal periodical. Newsletters are “typically issued weekly or monthly, consist of only a few pages, and focus on recent trends and developments in a particular area of the law” (Mersky & Dunn, 2002, p. 369). Until recently, the *Notepad* was the newsletter produced by the State Bar Association of North Dakota (SBAND).

Regular features of the *Notepad* included professional notices (e.g., a law firm announces new associates), employment notices (e.g., a judicial district seeks applications for a law clerk), continuing legal education schedules, inserts that list changes to the most recent directory of lawyers and judges (e.g., change of address, change of email), and references to Attorney General Opinions.

A recent question presented to the North Dakota Attorney General, and referred to in the April 2002 *Notepad*, was whether it was a violation of the United States Constitution for higher education state institutions in North Dakota to place student teachers in parochial schools. The *Notepad* provided the formal opinion number (2002-F-05), the date issued (March 28, 2002), the name of the person requesting the opinion (Senator Terry M. Wanzek), and the Attorney General’s Opinion: “It is my opinion that it does not violate the United States Constitution for North Dakota state institutions of higher education to place student teachers in parochial schools if the placement is made pursuant to an appropriate placement policy.” The full analysis of the opinion can be found on the Attorney General’s website, available at <http://www.ag.state.nd.us>.

The *Notepad* is available at the following libraries or institutions: Bismarck State College, Lake Region State College, North Dakota State Library, North

Dakota Supreme Court Library, and the University of North Dakota Thormodsgard Law Library. Consult the catalog, Online Dakota Information Network (ODIN), for specific issues as holdings vary from library to library. ODIN is available at <http://www.odin.nodak.edu>.

### Legal Encyclopedias

Legal encyclopedias constitute another category of secondary sources of the law. Like nonlegal encyclopedias, "legal encyclopedias cover a wide range of topics, present fairly general information, and order the topics alphabetically" (Kunz, Schmedemann, Downs & Bateson, 2000, p. 51). Because they provide an overview of many topics, encyclopedias can be a useful starting point in legal research. As secondary sources, the legal encyclopedias "describe the law and operate as finding tools for primary authority. They do not, however, critique the law or suggest legal reforms" (Kunz, Schmedemann, Downs & Bateson, 2000, p. 54). The two most widely used legal encyclopedias are *Corpus Juris Secundum* (1936-) and *American Jurisprudence, Second Edition* (1962-).

### *Corpus Juris Secundum*

The *Corpus Juris Secundum* (C.J.S.) legal encyclopedia, a set consisting of 101 numbered volumes kept up to date with pocket-part supplements, has detailed, volume-length subject entries (referred to as titles) for both "Schools and School Districts" and "Colleges and Universities." The titles are preceded by useful outlines of the subjects and help provide quick access to the appropriate topic or subtopic within the subject. The following are some of the broad topics included in the outline for "Schools and School Districts": Teachers, Principals, Superintendents, and Similar Personnel; Property and Contracts; Fiscal

Management, Debts, Securities, and Taxation; Admission and Attendance of Pupils; Transportation of Pupils; Conduct of Schools and Scholastic Activities; Control of Pupils and Discipline; Graduation and Diplomas; Private Schools; and Interscholastic Athletics and Associations.

Preceding each topic or subtopic is a "brief summary of a point of law. This 'black letter' statement is followed by text expounding upon that point of law. Footnote references are arranged hierarchically by federal court and then alphabetically by state" (Mersky & Dunn, 2002, p. 351). For example, under the subtopic Compulsory Attendance and Truancy, the brief summary of the law states: "Generally, under the compulsory attendance statutes, persons who have the custody or control of children between the ages specified in the statute have the legal duty to have the children attend school for the required period" (78A C.J.S. *Schools and School Districts* § 734a (1995)). This is explained further under Prosecution of Offenses related to attendance statutes: "A proceeding against a parent for intentional noncompliance with compulsory school attendance laws must be prosecuted in accordance with the governing statute" (78A C.J.S. *Schools and School Districts* § 739a (1995)). The footnote then provides a reference to a specific North Dakota case. In the North Dakota case, *State v. Shaver* (1980), the North Dakota Supreme Court held that the state's compulsory school attendance law did not violate the parents' free exercise of religion. The tenets of the parents' faith, as members of the Bible Baptist Church, did not forbid public school education and did not include any conviction against the use of certified teachers, a requirement of North Dakota state law.

The C.J.S. outline for "Colleges and Universities" includes the following: In General; Property and Funds; Governing Boards and Officers; Faculty and Staff; Students; Intercollegiate Associations; and Actions. A subtopic under Faculty and Staff, Tenure Review Proceedings, states the black letter law: "A nontenured state university employee has no right to a statement of the reasons or a hearing on a university decision not to rehire him, but a nontenured professor has a constitutional right to have procedures followed which are set out in a faculty handbook prior to a decision not to renew his contract" (14A C.J.S. *Colleges and Universities* § 24c (1991)). This is further explained:

However, if the college's own rules dictate that certain procedures have to be used when an untenured instructor is not reappointed, it is bound to follow them....Tenure review need not be perfect, but must be fairly and fully conducted to protect an individual's source of employment.

Substantial compliance with procedural requirements for termination of a nontenured college teacher is sufficient if their purpose is fulfilled. (14A C.J.S. *Colleges and Universities* § 24c (1991))

A footnote provides a reference to a North Dakota case in regard to the substantial compliance issue. In *Stensrud v. Mayville State College* (1985), it was found that Mayville State College did substantially comply with the procedural requirements for the termination of Jan Stensrud, a probationary non-tenured physical education instructor and coach.

*American Jurisprudence, Second Edition*

The *American Jurisprudence, Second Edition* (Am. Jur. 2d) legal encyclopedia is also a multi-volume set kept up to date with pocket parts and is arranged

under more than 430 broad topics. The editorial philosophy underlying *Am. Jur. 2d* is “to set forth points of law, together with discussions of those legal subjects and citations to controlling cases that interpret and construe that point of law” (Mersky & Dunn, 2002, p. 352). There are topical entries under both “Schools” and “Colleges and Universities.” The topics are referred to as articles. The Scope of Topic for “Schools” sets out what will be found in the article:

This article treats the law governing public and private schools of elementary or high school grade. It discusses school districts and administrative officers and boards, school property and buildings, school funds and expenditures, teachers and other employees, pupils and their relationship to the school, the regulation of the curricula, the relationship between government and church-related schools, and private schools. Incorporated into the discussion of private schools is a treatment of correspondence schools and other private schools of a post-high school, but noncollege level. (68 *Am. Jur. 2d Schools* 291 (2000))

Like *C.J.S.*, *Am. Jur. 2d* provides abundant footnotes with cites to case law. As compared with *C.J.S.*, there is a greater emphasis placed on statutory law in *Am. Jur. 2d* (Mersky, 2002). For example, there is a footnote reference to the *United States Code Annotated* (20 U.S.C.A. §1414 (d) (1) (A)) in the *Am. Jur. 2d* section on the content of an individualized education program:

The individualized education program for a child with a disability is required to include: a statement of the present levels of the child’s educational performance....[and] appropriate objective criteria and valuation procedures and schedules for determining, on an annual basis,

whether instructional objectives are being achieved. (68 *Am. Jur. 2d Schools* § 348 (2000))

The Scope of Topic for “Colleges and Universities” sets out what will be found in the article: “This article discusses public and private institutions of higher learning, whether incorporated or unincorporated; their nature, powers, duties, government, and personnel; support of such institutions; their liabilities; and their dissolution” (15A *Am. Jur. 2d 245 Colleges and Universities* (2000)).

In addition to references to case law and statutory law, the *Am. Jur. 2d* provides references to law review articles and to annotations found in the *American Law Reports*, discussed immediately below.

#### American Law Reports

The *American Law Reports* (A.L.R.) is another category of secondary sources of the law. The *A.L.R.* began in 1919 with the first series; the *A.L.R.* now consists of *A.L.R. 1st* through *A.L.R. 5th* (covering state cases) and *A.L.R. Federal* (covering federal cases). The *A.L.R.* provides the researcher with annotations and cases. An annotation “is an article that discusses, in great detail, the various cases on a fairly narrow legal topic....accompanying the annotation is a case, a court’s opinion selected by the publisher as a leading case on the topic discussed in the annotation” (Kunz, Schmedemann, Downs & Bateson, 2000, p. 78).

As mentioned above, footnotes in the legal encyclopedia *Am. Jur. 2d* refer to annotations in the *A.L.R.* series.

The publishers contrast *Am. Jur. 2d*, a source of the law in breadth, with *A.L.R.*, a source of the law in depth. The former is useful in obtaining a

quick answer to a problem that then may be explored in depth in A.L.R. (Mersky & Dunn, 2002, p. 352)

An example of an annotation related to schools and colleges is one about the transportation of students and tort liability. The annotation, a 74-page article, begins with a useful outline of the article that provides quick access to particular sections of the article. For example, "Before or During Boarding of the Schoolbus" is a separate section from "During Transportation" and from "During or After Discharge of Passengers." The article distinguishes among a student who was struck by a school bus, who fell against a bus, who was attacked by a fellow student, who was attacked by a person unknown, who was struck by a passing vehicle (while waiting at a bus stop, or while crossing the street at a bus stop, or while walking to the bus stop) and whether recovery was allowed or held supportable and/or whether recovery was not allowed. The above is all from the section, "Before or During Boarding of the Schoolbus," before the bus has even begun to move.

Annotations begin with general remarks and then narrow to discuss specific cases and jurisdictions:

Accidents associated with transportation are deemed to include those arising out of use of school provided or approved vehicles and includes those which occur while pupils are grouped in a prescribed area for the purpose of awaiting a schoolbus, as well as those which occur immediately after a pupil has alighted, and includes only actions involving injuries to student passengers. (Tracy A. Bateman, J.D., *Tort*

*Liability of Public Schools and Institutions of Higher Learning for Accidents Associated with Transportation of Students*, 23 ALR 5th 1 (1994))

Annotations provide useful research references to encyclopedias (*C.J.S.* and *Am. Jur. 2d*), to texts, to legal periodicals, and to related annotations. The individual *A.L.R.* annotation also has its own index, as well as a table of cited statutes and cases within the annotation.

The value of locating a relevant *A.L.R.* Annotation cannot be overstated, since it presents in an organized fashion a commentary and discussion of all previously reported cases on a particular topic. Locating an onpoint *A.L.R.* Annotation spares the researcher the task of finding relevant cases... (Mersky & Dunn, 2002, p. 117)

There are several methods used to update an *A.L.R.* annotation in order to locate more recent cases. For the *A.L.R.* (First Series), consult the *A.L.R. Blue Book of Supplemental Decisions*, a nine-volume set, and the annual supplement. To update annotations in the *A.L.R. 2d*, consult the *A.L.R. 2d Later Case Service*, a multivolume set and the annual supplements. To update annotations in the *A.L.R. 3d, 4th, 5th*, and *Federal*, consult the annual supplements. In addition, for all annotations, consult the Annotation History Table in the *A.L.R.* Index volume. This table provides information about whether or not the annotation has been supplemented or superseded by another annotation.

#### Treatises

Legal encyclopedias such as *C.J.S.* and *Am. Jur. 2d* provide broad coverage of many areas of the law. The *A.L.R.* annotations provide more in-depth coverage of selected areas of the law. And treatises, an additional secondary



source of the law, “generally provide in-depth treatment of a single subject, such as torts or constitutional law” (Sloan, 2003, p. 32). Legal treatises “include a wide variety of publications, ranging from multivolume works and textbooks to shorter monographs” (Mersky & Dunn, 2002, p. 396). Legal treatises can also be published in loose-leaf format, as discussed in the next section below.

Treatises of interest to educators would include some of those examined for this study. Of particular interest might be Alexander and Alexander’s *American Public School Law* (2001, Wadsworth Group). The authors state in the Preface to their treatise what readers can hope to find:

The legal precedents presented and discussed herein deal with the multitude of issues occurring in a country that has developed an extraordinary reliance on the public schools as a mechanism for social and economic justice and improvement....An undertaking of the pervasive magnitude of public schools, involving such an amalgam of people, is naturally fertile ground for conflicting human differences and perceptions. This book is about those conflicts that were not resolvable through the normal political processes and ultimately required judicial resolution. What the courts have said in enunciating legal precedents is valuable information for all those involved with the public schools.

(Alexander & Alexander, 2001, p. xxxi)

The book is organized around the broad topics of law as outlined in the methodology chapter of this study, e.g., student rights, rights of the disabled, instructors’ rights and freedoms. For each of the topics, there are cases illustrating the rule of law.

This book employs the “case” or “discussion” method of teaching the law....For the fledging educator, the study of actual cases may well substitute for actual experience and prevent costly repetition. In some instances, a more comprehensive knowledge of both education and the law may prevent resorting to the courts for redress. (Alexander & Alexander, 2001, p. xxxii)

North Dakota educators and citizens might be interested in the North Dakota Supreme Court case that was included in the section of the Alexander and Alexander treatise about open meetings and public records laws: *Hovet v. Hebron Public School District* (1988). In the *Hovet* case, the North Dakota Supreme Court held that a citizen may review a teacher’s personnel file under the authority of state’s public record law (Alexander & Alexander, 2001). Note that *Hovet* is a 1988 case. This case, like any other case discussed or used as an illustration, may be affected by later case law or by later amendments to state statutes. Information on updating a statute is discussed in the chapter on North Dakota legislation. Information on how to update a case, to see if a case is still “good law,” is discussed in the “Shepardizing” section of the chapter on North Dakota case law.

In another education law treatise, *Education Law* (Imber & Van Geel, 2000), a North Dakota case is presented to illustrate potential difficulties with individual teacher contracts: *Bottineau Public School District No. 1 v. Currie* (1977).

As *Bottineau* shows, contracts are not formed by statements of intention to hire or to work in the absence of a definite agreement between the parties on terms of the employment. Even where there is a definite agreement, a

contract may not be formed if one of the parties lacks the authority to enter into a contract. (Imber & Van Geel, 2000, p. 432)

In the Education Law Association's treatise, *The Colleges, Their Constituencies and the Courts* (Hendrickson, 1999), a North Dakota case is noted in the chapter about faculty employment issues. In *Batla v. North Dakota State University* (1985), tenure was denied to a probationary faculty after a review, raising claims of breach of contract.

#### Loose-leaf Services

Loose-leaf services are a unique category of secondary sources. These services not only provide access to information about the law, explaining and interpreting the law as secondary sources do, but they also sometimes serve as a primary source of the law, providing access to the law itself. *The Standard Federal Tax Reporter*, published by Commerce Clearing House, is an example of a loose-leaf service fulfilling this dual function. The *Standard Federal Tax Reporter*, a multivolume loose-leaf, not only explains and interprets the law, but one of the volumes in the set also contains the law itself, advance sheets for U.S. tax cases, a primary source of the law. Educators might consult the Topical Index to the *Standard Federal Tax Reporter* and look under "Educational Expenses, teachers and professors" for a list of tax-related subtopics that includes the following: certification in another state, graduate study, law school courses, sabbatical leave, substitute teacher, summer school, and travel expenses.

Another unique feature of loose-leaf services is their very format: loose leaves. In addition, these services often utilize three-ring binders or other custom-made binders.

Looseleaf services consist of special binders that simplify the insertion, removal, and substitution of individual pages. This characteristic allows the publisher to update material frequently and systematically through a process of constant editing, introducing what is new, and removing what is superseded. The speed and accuracy afforded by this ongoing revision are two of the looseleaf services' greatest assets. (Mersky & Dunn, 2002, p. 295).

Loose-leaf services cover numerous topics of the law and some serve as a treatise in a particular area of the law, albeit a treatise in a loose-leaf format, rather than in a book format. *Education Law* (Russo & Mawdsley, 2002) is an example of a treatise in loose-leaf format. *Education Law* covers several key topics in K-12 and higher education law including: school governance and procurement issues; employee concerns, including tenure, dismissal, and discrimination; dispute resolution procedures; student rights, including rights to privacy and procedural due process; and provisions for individualized education to disabled students.

CHAPTER V  
NORTH DAKOTA CONSTITUTION  
Introduction to State Constitutions

G. Alan Tarr, a state constitutional scholar, expressed his frustration with what he perceived as an underdeveloped interest in state constitutional law: “Americans live under a system of dual constitutionalism, but one would hardly know it. Leading constitutional-law texts...focus exclusively on the United States Constitution and its interpretation” (Tarr, 1998, p. 1). Tarr argued that an understanding of state governments and politics is intimately tied with an understanding of state constitutions.

After all, it is the state constitution – and not the federal Constitution – that creates the state government, largely determines the scope of its powers, and distributes those powers among the branches of that state government and between state and locality. It is likewise the state constitution that structures political conflict within the state and provides mechanisms for its resolution. And it is the state constitution that arguably embodies the aims and aspirations of the state’s citizenry. (Tarr, 1998, p. 3)

A state’s constitution is the “highest primary legal authority for the state, except with respect to those issues covered by the Supremacy Clause of the federal Constitution” (Mersky & Dunn, 2002, p. 44). The guide to the primary

authority legal resources of North Dakota begins then, logically enough, with the North Dakota Constitution.

### The North Dakota Constitution

In 1861, U.S. President Buchanan signed the Organic Act that created the first government for the Territory of Dakota. Dakota Territory was composed of the future states of North and South Dakota, most of Montana, northern Wyoming, and northeastern Nebraska. In 1889, the federal Omnibus Bill authorized the creation of constitutions for the soon-to-be states of North and South Dakota, as well as for Montana and Washington. The Constitution of North Dakota was adopted on October 1, 1889.

At the October 1 election, the people elected legislators and state officials, including three supreme court justices and congressmen. And on November 2, 1889, President Benjamin Harrison declared North Dakota a state and John Miller became the first governor. (Leahy, 2003, p. 11)

The *North Dakota Revised Code of 1943* included a reprint of the Constitution, as did the original Volume 13 of the *North Dakota Century Code*. The latter also included subsequent amendments. The present-day Constitution is found in Volume 13A of the *North Dakota Century Code*.

#### *Article VIII, § 1*

Of particular interest to educators and citizens is Article VIII of the Constitution of North Dakota. Article VIII pertains to education and has six separate sections. Section 1 provides:

A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in

order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota. (N.D. Const. Art VIII, § 1)

An early North Dakota case addressed the issue of whether the constitutional power to prepare a course of study lies with the legislature or with the superintendent of public instruction. In *State ex rel. Langer v. Totten* (1920), the court examined a 1919 act, Senate Bill No. 134, known as the Board of Administration Bill:

It is therefore held that Senate Bill No. 134 granting to such board of administration the authority to supervise and control the preparation of courses of study in the common schools of this state is a valid legislative act ...that in such respect the superintendent of public instruction possessed the power and duty to prepare and prescribe courses of study in the common schools of this state subject to the supervision and control of the board of administration and the educational commission of which such superintendent is a member thereof. (*State ex rel. Langer v. Totten*, 1920)

*Article VIII, § 2*

Article VIII, Section 2 provides:

The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.

(N.D. Const. Art VIII, § 2)

A useful annotation about fees and schools appears in the American Law Reports. The annotation explores tuition fees, matriculation and registration fees, incidental fees, and fees for particular materials, activities or privileges that elementary and secondary school students may be required to pay. A North Dakota case (*Batty v. Board of Education*, 1936) is cited in the annotation where the court invalidated a tuition fee for a student who had not completed high school within the expected four years.

[T]he court reasoned that since the school board had other means of dealing with habitually indolent students, and since the state constitution and its implementing statute had expressly provided for free schools, payment for school privileges could not be extracted for a bad or indolent pupil any more than it could from a good and industrious one. (Jeffrey F. Ghent, J.D., Annotation, *Validity of Exaction of Fees from Children Attending Elementary or Secondary Public Schools*, 41 ALR 3d 752,759-60 (1972 & Supp. 2002))

*Article VIII, § 3*

Article VIII, Section 3 provides:



In all schools instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind. (N.D. Const. Art VIII, § 3)

The Supreme Court of North Dakota referred to this section of the Constitution in the case *State v. Anderson* (1988). The Andersons had appealed a conviction for a violation of the North Dakota compulsory school attendance law. The Andersons, non-certified teachers, taught their children at home; their home school was not a state-approved private or parochial school.

Section 3 requires that all schools instruct in areas of knowledge that impress upon the mind the importance of “truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind.” When each of those constitutional provisions are given full effect and harmonized, the Legislature’s plenary power is not limited to regulating only “public schools.” Rather, those constitutional provisions authorize the Legislature to regulate all schools subject, of course, to limitations that may be imposed by other constitutional provisions and congressional acts. (*State v. Anderson*, 1988)

The North Dakota Supreme Court upheld the lower county court conviction; the United States Supreme Court declined to hear the case.

#### *Article VIII, § 4*

Article VIII, Section 4 provides:

The legislative assembly shall take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of

study, and to promote industrial, scientific, and agricultural improvements. (N.D. Const. Art VIII, § 4)

The Supreme Court of North Dakota also referred to this section of the Constitution in the case *State v. Anderson* (1988).

Sections 1 and 2 [of Article VIII] authorize the Legislature to establish “public schools.” However, those sections must be read and harmonized with Section 4 which authorizes the Legislature to take necessary steps to prevent illiteracy and ensure uniform instruction. (*State v. Anderson*, 1988)

*Article VIII, § 5*

Article VIII, Section 5 provides:

All colleges, universities, and other educational institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the state. No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school. (N.D. Const. Art VIII, § 5)

An *American Law Reports* annotation provides the educator with additional information to better understand how various courts have treated similar constitutional provisions.

This annotation collects and analyzes the state and federal cases in which the courts have passed on the validity of, or decided whether a school sufficiently complied with, state statutory or administrative standards for the state’s approval of a private school as being eligible to receive public placements of students or state reimbursement for all or part of the cost of

educating certain students. (Jeffrey F. Ghent, J.D. Annotation, *Validity of, and Sufficiency of Compliance with, State Standards for Approval of Private School to Receive Public Placements of Students for Reimbursement for Their Educational Costs*, 48 ALR 4th 1231, 1232 (1986 & Supp. 2002))

*Article VIII, § 6*

Article VIII, Section 6 provides, in part:

1. A board of higher education, to be officially known as the state board of higher education, is hereby created for the control and administration of the following state education institutions, to wit:

(N.D. Const. Art VIII, § 6)

An early *North Dakota Law Review* article provides an excellent historical overview on the subject of the state board of higher education and constitutional autonomy.

The principle of legal autonomy in American higher education dates back at least to the famed Dartmouth College case in 1819, in which the United State Supreme Court held that any action by the New Hampshire Legislature inconsistent with the College charter granted by the British crown in 1769 would be an impairment of the obligation of contract in violation of article I, section 10 of the United States Constitution. It was in this tradition, amplified by their own dissatisfaction with a politically controlled education system, that the people of North Dakota approved an amendment to article 54 of their state constitution in 1938, establishing a State Board of Higher Education with “full authority” over several state

institutions assigned to its "control and administration." (54 N.D. Law Rev. 529, 530 (1978))

Chapter 15-10 of the *North Dakota Century Code* sets forth the statutory powers of the State Board of Higher Education. In addition, the State Board of Higher Education Policy Manual is available online via the North Dakota University System website: <http://www.ndus.nodak.edu>.

#### North Dakota Constitution Availability

##### *Print*

The North Dakota Constitution is found in volume 13A of the *North Dakota Century Code*. The *North Dakota Century Code* is available at the following ODIN libraries: Altru Medical Library, Bismarck State College, Dickinson Public Library, Dickinson State University, Fargo Public Library, Grand Forks Public Library, Jamestown College, Mayville State University, Minot State University, Minot State University- Bottineau, North Dakota College of Science, North Dakota State Library, North Dakota Supreme Court Library, State Historical Society, University of North Dakota Chester Fritz Library, University of North Dakota Harley E. French Library of the Health Sciences, University of North Dakota Thormodsgard Law Library, Valley City State University, and Williston State College.

##### *Online*

The North Dakota Constitution is available online. Retrieved April 27, 2003, from the North Dakota Legislative Branch web site:  
<http://www.state.nd.us/lr/information/statutes/const-laws.html>.

## For Further Information

The following resources provide additional information about researching state constitutional law. Some resources are specific North Dakota resources; other resources are more general in nature.

### *The North Dakota State Constitution: A Reference Guide*

G. Alan Tarr, a constitutional scholar, serves as the series editor for a series of books about individual state constitutions, *Reference Guides to the State Constitutions of the United States*. The North Dakota volume for this series was just published in 2003 and Tarr wrote the following in the Series Foreword:

James E. Leahy's excellent study of the North Dakota Constitution is the latest volume in the series, *Reference Guides to the State Constitutions of the United States*, which reflects this renewed interest in state constitutions and will contribute to our knowledge about them. Because the constitutional tradition of each state is distinctive, the volume begins with the history and development of the North Dakota Constitution. It then provides the complete text of North Dakota's current constitution, with each section accompanied by commentary that explains the provision and traces its origins and its interpretation by the courts and by other governmental bodies. Finally, the book concludes with a table of cases cited in the history and the constitutional commentary, as well as a subject index. (Leahy, 2003, pp. xx-xxi)

Chief Justice Gerald VandeWalle of the North Dakota Supreme Court also wrote a Foreword for the book, citing its uniqueness and usefulness:

Professor James E. Leahy has written one of the very few (if not the very first) comprehensive discussions and reviews of the North Dakota Constitution and the legal decisions construing it....Professor Leahy has researched and written a book that teaches its readers without being unduly pedagogic. The book will be of interest, even to casual readers. Most importantly, it is a splendid reference for lawyers and litigants who are researching the meaning of the individual provisions of the North Dakota Constitution. Well laid out, the work provides easy and logical access to the constitution, the legislative enactments implementing the constitution's provisions, and the North Dakota and U.S. Supreme Court cases construing the constitution. (Leahy, 2003, pp. xxi-xxiv)

*North Dakota Blue Book*

The *North Dakota Blue Book* is an excellent resource for information about the state's cultural, economic, environmental, political, and social condition. The 2001-2003 *North Dakota Blue Book*, published by the North Dakota Secretary of State, is the 24th edition. It contains information about the North Dakota Constitution, including information about amending the constitution and the 1972 Constitutional Convention. The 2001-2003 *North Dakota Blue Book* also refers researchers to earlier editions for more information on both the 1972 Constitutional Convention (see the 1989 and 1999-2001 *North Dakota Blue Books*) and the Constitutional Convention of 1889 (see the 1989 *North Dakota Blue Book*).

The 2001-2003 *North Dakota Blue Book* also has a chapter devoted to information about education in the state.

This chapter includes new information about education that hasn't been published in previous recent Blue Books. This is a culmination of efforts to bring North Dakota Blue Book readers the entire story of education in the state. We are addressing, for the first time, the other forms of education in the state. For example, the North Dakota Department of Public Instruction administers a number of programs including the Division of Independent Study, School for the Blind, School for the Deaf and Alternative Education. The Department also administers a number of title programs now described in this chapter. Educational efforts of other means are described including Vocational Technical Education, non-public education, Indian Education, and Home School Education. (2001-2003 *North Dakota Blue Book*, 2001, p. 465)

#### *Governing North Dakota 2001-2003*

The book, *Governing North Dakota 2001-2003*, contains a wide variety of information about North Dakota government at the state, county, and city levels. It includes the North Dakota Constitution and provides specific information about the constitution:

The constitution of North Dakota runs some 17,500 words – or three times long as the U.S. Constitution. The style is similar to that used in other states. Starting out with a “preamble,” which is a general opening paragraph, the constitution is divided into a series of “articles.” The articles are major divisions of the constitution and are made up of subdivisions called “sections.” The original constitution consisted of 20

articles which were divided into 217 sections. The North Dakota constitution now consists of 13 articles. (Omdahl, 2001, p. 11)

*The Book of the States*

The Council of State Governments, a national organization founded in 1933, provides the executive, judicial, and legislative branches of state government with leadership education, research, and information services. The nonprofit, nonpartisan Council prints a particularly helpful publication, *The Book of the States*. Beginning with the 2002 edition of *The Book of the States*, some important changes were made:

It is with great pleasure that we bring you this new edition of *The Book of the States*, the premier reference work on state government. The Council of State Governments adopted a new mission to assist state leaders and managers in tracking emerging trends and issues. This particular volume, with more than 20 articles and almost 200 tables and figures, is designed to reflect our new trends mission and to help state policy-makers and others make more informed decisions...Beginning with this edition, we are planning to publish the book annually, ending our 70- year tradition of biennial editions. (The Council of State Governments, *The Book of the States*, 2002, p. xv)

The first chapter in the 2002 edition of *The Book of the States*, the first of the articles mentioned above, specifically addresses trends in state constitutions and constitutional revision:

In 2000-2001, as the 20th century ended and the 21st century began, the level of state constitutional activity continued to decline. The number of



states engaged in amending and revising their constitutions was the lowest in 30 years. The use of constitutional initiative remained relatively high, however, following usage records set in the 1990s. But there were differences from the past. The number of amendments to state Bills of Rights was the lowest in 30 years and none concerned criminal justice, which generally dominated the rights agenda in the 1990s...Another change was the failure to adopt any amendments that severely limit the capacity of state and local governments to levy taxes. As states grapple with revenue shortfalls, fiscal restrictions may no longer be viable. (*The Book of the States*, 2002, p. 3)

*The Book of the States* is available at the following ODIN libraries: Bismarck State College, Dickinson State University, Fargo Public Library, Grand Forks Public Library, Jamestown College, Lake Region State, Mayville State University, Minot State University, North Dakota College of Science, North Dakota State Library, North Dakota Supreme Court Library, State Historical Society, University of North Dakota Chester Fritz Library, University of North Dakota Thormodsgard Law Library, Valley City State University, and Williston State College.

*The Book of the States* is not available online but the Council of State Governments, the publisher of *The Book of the States*, has a useful web site.

Retrieved April 29, 2003, from the Council of State Governments:

<http://www.csg.org>.

*Center for State Constitutional Studies*

According to *The Book of the States*, the foremost source of information on state constitutions is the Center for State Constitutional Studies at Rutgers University in Camden, New Jersey.

An interdisciplinary institute, [the Center for State Constitutional Studies] seeks to initiate, sponsor and conduct research and educational programs on American state constitutions and on subnational constitutions of federal systems of other nations. In May 2000, the center sponsored a national conference on "The State of the State Constitution" ....Arising from the conference is a new project, "State Constitutions for the 21st Century" ....Its major purpose is to provide guidance for the revision of state constitutions to enable them to provide the framework for effective and responsive state government in the new century. Experts on various state constitutional subjects have been enlisted to prepare model articles for a model constitution, on the order of the now outdated Model State Constitution prepared by the National Municipal League in the 20th century. (*The Book of the States*, 2002, p. 13)

The Center for State Constitutional Studies has a website that is helpful to those researching state constitutional law: <http://www.camlaw.rutgers.edu/statecon>.

## CHAPTER VI

### NORTH DAKOTA LEGISLATION

#### Introduction to the North Dakota Legislative Assembly

The North Dakota Legislative Assembly is comprised of the House of Representatives and the Senate. In the House of Representatives, the Speaker is the presiding officer. In the Senate, the North Dakota Lieutenant Governor serves as the President of the Senate. The Legislative Assembly meets biennially, usually from the second week in January to mid-April, in odd-numbered years. Each person elected to the Legislative Assembly “must be, on the day of the election, a qualified elector in the district from which the member was chosen and must have been a resident of the state for one year immediately prior to that election” (N.D. Const. Art. IV, § 5).

As the policy making branch for the state, the North Dakota Legislative Assembly is responsible for enacting laws and appropriating the money necessary to operate state government. In addition, the Legislative Assembly conducts oversight activities by determining that the money and authority given to the state and local governments is being handled in the manner that the Legislative Assembly intended....The bulk of the Legislative Assembly’s work is conducted through the use of standing committees. In 2001, there were 11 standing committees in each house. (North Dakota Blue Book, 2001, pp. 296-298)

## Standing Committees

The Legislative Assembly process is significant, but “the real work is done in the standing committees. These are committees of legislators organized to research and review bills relating to particular subjects, such as agriculture, natural resources, or transportation” (Omdahl, 2001, p. 30).

Legislative standing committees serve several functions. The committees help share the workload, call upon the expertise of all the committee members, receive information, work out compromises, and provide the legislature with advice (Omdahl, 2001). In 2001, the eleven standing committees of each house were: Agriculture; Appropriations; Business and Labor; Education; Finance and Taxation; Government and Veterans Affairs; Human Services; Industry; Natural Resources; Political Subdivisions; and Transportation (Omdahl, 2001). The subjects assigned to the Education Standing Committee were public schools, libraries, and institutions of higher learning (Omdahl, 2001).

## North Dakota Legislative Documents

There are four main categories of North Dakota legislative documents: bills, resolutions, session laws, and statutes. Each category of legislative document is discussed, beginning with bills.

### *Bills*

The basic legislative document is the bill. Bills are introduced in the Legislative Assembly not only to make new law, but also to change an existing law or to abolish a prior law.

To become a law a bill must pass the House of Representatives and the Senate by a majority vote of the members-elect in each house. Bills may

be introduced by members of the Legislative Assembly, standing committees, or the Legislative Council. A state executive agency or the North Dakota Supreme Court can have bills automatically introduced in the name of the standing committee to which the bill will be referred. House bills begin with the number 1001, and Senate bills begin with the number 2001. The Constitution of North Dakota (Article IV, Section 13) provides that bills adopted by the Legislative Assembly generally take effect August 1 after filing with the Secretary of State. However, certain appropriations and tax measures become effective July 1. The effective date may be later if specifically written into a bill. The effective date may be earlier if the Legislative Assembly declares an "emergency" and the measure receives a two-thirds vote of the members-elect in each house. (North Dakota Blue Book, 2001, p. 355)

The North Dakota Legislative Council, discussed later in the chapter, maintains a website that includes an article on "How a Bill Becomes a Law." The article discusses the process, including referring bills to a committee, scheduling public hearings on bills, amending bills, and the Governor's signing or vetoing of bills. The article is online: <http://www.state.nd.us/lr/information/general/bill-law.html>.

House Bill No. 1437, concerning religious speech in schools, is an example of a bill from the 2001 Fifty-seventh Session of the Legislative Assembly. The bill, introduced in the House and referred to the Education Committee, was originally a bill for an act to amend and reenact a section of the *North Dakota Century Code* relating to a period of silence in schools. As the bill made its way

from the House to the Senate, some changes were made and eventually a new section to the *North Dakota Century Code* was added. The *Laws of North Dakota* and the *North Dakota Century Code*, both discussed below, reflect the final disposition of the bill.

Senate Bill No. 2136 is another example of a bill from the 2001 Fifty-seventh Session of the Legislative Assembly. Senate Bill No. 2136 was a bill for an act to amend and reenact a section of the *North Dakota Century Code* concerning resident tuition at state institutions of higher education in North Dakota. The bill was introduced at the request of the State Board of Higher Education. The *Laws of North Dakota* and the *North Dakota Century Code*, both discussed below, reflect the final disposition of this bill as well.

#### *Resolutions*

Although resolutions do not have the force of the law behind them like bills do, they nevertheless serve several important functions in the legislative process.

[Resolutions] propose constitutional amendments, express opinions, request actions, congratulate, or console. Resolutions do not have the effect of law. Resolutions are the vehicles used to propose constitutional amendments for voter consideration. Resolutions are used to request an interim study by the Legislative Council on a specific subject. Resolutions frequently express legislative opinion to Congress or other federal offices with regard to federal programs or policies. House concurrent resolutions begin with the number 3001, and Senate concurrent resolutions begin with the number 4001. Concurrent means that a particular resolution must be

approved by both the House and Senate. The House or Senate may use resolutions for their own separate business such as memorial resolutions for deceased members, e.g., House Memorial resolution 7001; Senate Memorial Resolution 8001. (North Dakota Blue Book, 2001, p. 355)

House Concurrent Resolution No. 3061 from the 2001 Fifty-seventh Session of the Legislative Assembly was a resolution requesting that the Legislative Council conduct a study. House Concurrent Resolution No. 3061 directed the Legislative Council to study the delivery of education at the elementary, secondary, and postsecondary levels during the next five, ten, and twenty years, focusing on demographic trends as they affect the delivery of educational services, work force training, and economic development. As the resolution worked its way from the House to the Senate, it was amended to request that additional components be added to the study. The results of the requested study were recorded in the *Report of the North Dakota Legislative Council to the Fifty-eighth Legislative Assembly*, discussed in the last part of this chapter.

#### *Sessions Laws*

Session laws are the next type of legislative document. Session laws may vary in title from state to state but their function, to gather together the laws passed at a legislative assembly, is similar.

Each state publishes a series of bound volumes containing all of the laws passed during each session of its legislature. These volumes are often titled, generically, *session laws*, although some states use other names, e.g., *acts and resolves*, *statutes*, or *laws*. By whatever name they are published, these session laws include public laws (those that relate to the public as a

whole), as well as private, temporary, local, and appropriation acts. State session laws are published chronologically by order of adoption, much like the *United States Statutes at Large*, [sic] and are issued in bound form after the session is over. (Mersky & Dunn, 2002, p. 221)

In North Dakota, the session laws are called the *Laws of North Dakota*. The *Laws of North Dakota* are published on a biennial basis, after each session of the Legislative Assembly.

[The Laws of North Dakota] contain the text of all measures enacted (bills) or adopted (resolutions) by a particular Legislative Assembly. The Session Laws also include: constitutional amendments proposed by the Legislative Assembly....initiated laws or constitutional amendments and referred bills submitted to voters since publication of the preceding Session Laws....governor's veto messages; lists of House and Senate members; [and] a statewide legislative district map. (2001-2003 North Dakota Blue Book, 2001, pp. 355-356)

House Bill No. 1437, the bill concerning religious speech in schools discussed earlier, appears in the 2001 *Laws of North Dakota*. The bill, now an enacted law, has two sections. The first section creates a new section of the *North Dakota Century Code*; the second section repeals an earlier section of the *North Dakota Century Code*. The law provides:

SECTION 1. A new section to chapter 51.1-19 of the North Dakota Century Code is created and enacted as follows:  
Recitation of prayer – Period of silence – Pledge of allegiance.



1. A student may voluntarily pray aloud or participate in religious speech at any time before, during, or after the school day to the same extent a student may voluntarily speak or participate in secular speech.
2. A school board, school administrator, or teacher may not impose any restriction on the time, place, manner, or location of any student-initiated religious speech or prayer which exceeds the restriction imposed on students' secular speech.
3. A school board may, by resolution, allow a classroom teacher to impose up to one minute of silence for meditation, reflection, or prayer at the beginning of each school day.
4. A school board may authorize the voluntary recitation of the pledge of allegiance by a teacher or one or more students at the beginning of each school day. A student may not be required to recite the pledge of allegiance, stand during the recitation of the pledge of allegiance, or salute the American flag.

SECTION 2. REPEAL. Section 15.1-19-03 of the North Dakota Century Code is repealed. (2001 N.D. Laws ch. 187, at 697)

Senate Bill No. 2136, the bill concerning resident tuition discussed earlier, appears in the 2001 *Laws of North Dakota*. The bill, now an enacted law, amends an earlier subsection of the *North Dakota Century Code*. The crossed out language that appears below is language that was deleted; the underlined language is language that was added in the amendment. The new law provides:

SECTION 1. AMENDMENT. Subsection 2 of section 15-10-19.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A "resident student" for tuition purposes means:

- a. A person ~~less than eighteen years of age~~ whose guardian, custodial parent, or parents are legal residents of this state and have resided in this state for twelve months, or a dependent child whose custodial parent moved into the state with the intent to establish legal residency for a period of years within the last twelve months immediately prior to the beginning of the academic term;
- b. A person of age eighteen or over who is a legal resident of this state and has resided in this state after reaching age eighteen for twelve months immediately prior to the beginning of the academic term;
- c. A person who graduated from a North Dakota high school ~~within six years of the beginning of the academic term~~;
- d. A full-time active duty member of the armed forces assigned to a military installation in this state;
- e. A spouse or dependent of a full-time active duty member of the armed forces assigned to a military installation in this state; ~~a dependent or~~ of an ~~instructor who lives and teaches in~~ employee of any institution of higher education in this state, and a spouse of any other resident for tuition purposes; and

f. ~~Any other~~ A person who was a legal resident of this state for at least three consecutive years within six years of the beginning of the academic term. (2001 N.D. Laws ch. 164, at 539)

Thus, when looking at the session laws, a researcher can tell at a glance what language was deleted or added in the amendment that changed the previous law. When the session laws, the *Laws of North Dakota*, get "codified," they are referred to as statutes or codes, i.e., the *North Dakota Century Code*. This is discussed in the next section.

*Session Laws: Print*

The *Laws of North Dakota* are available in print format at the following ODIN libraries or institutions: Bismarck State College; Jamestown College; Minot State University; North Dakota State Library; University of North Dakota Chester Fritz Library; University of North Dakota Thormodsgard Law Library; and Valley City State University.

*Session Laws: Microfiche*

The *Laws of North Dakota* are available in microfiche format at the following ODIN libraries or institutions: North Dakota State Library, the State Historical Society, and the University of North Dakota Thormodsgard Law Library.

*Session Laws: Online*

The 1997, 1999, and 2001 *Laws of North Dakota* are available online. Retrieved May 8, 2003, from the North Dakota Legislative Branch website: <http://www.state.nd.us/lr/information/statutes/session-laws.html>

## *Statutes*

The *Laws of North Dakota*, the session laws, are a chronological arrangement of the laws as passed at the Legislative Assembly. The *North Dakota Century Code*, the state statutes, is a subject or title arrangement of those same laws.

Each volume of session laws for a state contains the public laws passed by the legislature during an annual, biennial, or special session. Since the laws passed are arranged chronologically in each volume, in order to facilitate access to state statutes it is necessary to rearrange those currently enforceable statutes by title or subject (similar to the subject arrangement of the United States Code). Each state does, in fact, have a set of statutes that have been extracted from the session laws and then reorganized topically for ease of use. (Mersky & Dunn, 2002, p. 222)

The *North Dakota Century Code* is currently arranged into sixty-five subject titles. For example, General Provisions is Title 1; Aeronautics is Title 2; and Education is Title 15. Titles are divided into chapters and are separated from the title by a dash. For example, *North Dakota Century Code* 15-10 is Title 15, Education, and Chapter 10 is the State Board of Higher Education chapter.

Chapters, in turn, are divided into sections, which are likewise separated from the chapters by dashes. For example, *North Dakota Century Code* 15-10-01 is Title 15 (Education), Chapter 10 (State Board of Higher Education), and Section 01 (Institutions administered by board). Similarly, *North Dakota Century Code* 15-10-02 is Title 15 (Education), Chapter 10 (State Board of Higher Education), and Section 02 (Membership of state board of higher education – Faculty adviser).

In addition, decimal points are used to designate sections that have been inserted between two consecutively numbered sections. For example, *North Dakota Century Code* 15-10-13.2 is Title 15 (Education), Chapter 10 (State Board of Higher Education), Section 13 (Faculties of institutions under supervision of state board of higher education), .2 (Public institutions of higher education – Faculty members – Oath or affirmation). *North Dakota Century Code* 15-10-13.2 is inserted between 15-10-13.1 (Faculty – English language proficiency) and 15-10-13.3 (Public institutions of higher education – Alien faculty members - Oath or affirmation). Decimals may also be used to designate a chapter that has been inserted between two consecutively numbered chapters. In addition, titles themselves can receive decimals; Title 15.1 is the Elementary and Secondary Education title.

#### *North Dakota Century Code Pocket Part Supplements*

The *North Dakota Century Code* is updated with occasional replacement volumes and with pocket part supplements. The supplements are published after the biennial sessions of the Legislative Assembly and are usually available in August after each session. The supplements are slipped into a “pocket” in the back of the bound volumes, hence the name “pocket part.”

An example of a law that appears in a pocket part supplement is subsection 2 of *North Dakota Century Code* 15-10-19.1 (Nonresident and resident student for tuition purposes defined). This is the subsection that was amended by Senate Bill No. 2136, the bill from the 2001 Fifty-seventh Session of the Legislative Assembly discussed earlier. The bill appeared, as enacted law, in the 2001 *Laws of North Dakota*, as was demonstrated above: deleted language was

crossed out, added language was underlined. When this law appears in the pocket part supplement of the *North Dakota Century Code*, the crossed-out language disappears altogether; the new language is there, but without the underlining. Thus, in *North Dakota Century Code* 15-10-19.1, the new subsection two appears as:

2. A "resident student" for tuition purposes means:
    - a. A person whose guardian, custodial parent, or parents are legal residents of this state and have resided in this state for twelve months, or a dependent child whose custodial parent moved into the state with the intent to establish legal residency for a period of years within the last twelve months immediately prior to the beginning of the academic term;
    - b. A person of age eighteen or over who is a legal resident of this state and has resided in this state after reaching the age of eighteen for twelve months immediately prior to the beginning of the academic term;
    - c. A person who graduated from a North Dakota high school;
    - d. A full-time active duty member of the armed forces assigned to a military installation in this state;
    - e. A spouse or dependent of a full-time active duty member of the armed forces assigned to a military installation in this state; or of an employee of any institution of higher education in this state, and a spouse of any other resident for tuition purposes; and
    - f. A person who was a legal resident of this state for at least three consecutive years within six years of the beginning of the academic term.
- (N. D. Cent. Code 15-10-19.1, 2001 Supp.)

### *Earlier Codifications and Compilations*

The *North Dakota Century Code* was first published pursuant to the 1959 *Laws of North Dakota*. The name, *Century Code*, was selected as a means to commemorate the one hundredth anniversary of the establishment of the Dakota Territory in 1861. North Dakota became a state in 1889. Earlier codifications and compilations of North Dakota state law were as follows: *Revised Codes of 1895*; *Revised Codes of 1899*; *Revised Codes of 1905*; *Compiled Laws of North Dakota 1913*, with 1925 supplement; and the *North Dakota Revised Code of 1943* with 1947, 1949, 1953, and 1957 supplements.

### *North Dakota Century Code: Print*

The *North Dakota Century Code* is available at the following ODIN libraries or institutions: Altru Medical Library; Bismarck State College; Dickinson Public Library; Dickinson State University; Fargo Public Library; Grand Forks Public Library; Jamestown College; Mayville State University; Minot State University; Minot State University – Bottineau; North Dakota State College of Science; North Dakota State Library; North Dakota Supreme Court Library; State Historical Society; University of North Dakota Chester Fritz Library; University of North Dakota Harley E. French Library of the Health Sciences; University of North Dakota Thormodsgard Law Library; Valley City State University and Williston State College.

### *North Dakota Century Code: Microfiche*

The *North Dakota Century Code* is available in microfiche at the University of North Dakota Thormodsgard Law Library.

### *North Dakota Century Code: Online*

The *North Dakota Century Code* is available online. Retrieved May 8, 2003, from the North Dakota Legislative Branch website:

<http://www.state.nd.us/lr/information/statutes/cent-code.html>.

### The North Dakota Legislative Council

The North Dakota Legislative Council was created in 1945 and was first called the Legislative Research Council. The Legislative Council is composed of 17 legislators, including the majority and minority leaders of both houses and the Speaker of the House, as well as a staff of attorneys, accountants, and researchers. The Legislative Council has the authority to initiate studies between the sessions of the Legislative Assembly. However, most of the studies it conducts are a result of study resolutions passed by the House of Representatives or the Senate.

The work for the studies is done in committees. Current Legislative Council committees are: Administrative Rules Committee; Advisory Commission on Intergovernmental Relations; Agriculture Committee; four Budget Committees; Commerce Committee; Corrections Committee; Education Committee; Electric Industry Competition Committee; Employee Benefits Programs Committee; Family Law Committee; Garrison Diversion Overview Committee; Higher Education Committee; Information Technology Committee; Judiciary A and B Committees; Legislative Audit and Fiscal Review Committee; Legislative Management Committee; Legislative Redistricting Committee; Regulatory Reform Review Committee; and the Taxation Committee.

The committees report the results of their studies to the full Legislative Council, usually in November preceding a legislative session that begins in



January. "The Council may accept, amend, or reject a committee's report. The Legislative Council then presents the recommendations it has accepted, together with bills and resolutions necessary to implement them, to the Legislative Assembly" (*Report of the North Dakota Legislative Council, 2003, p. 2*).

House Concurrent Resolution No. 3061 from the 2001 Fifty-seventh Session of the Legislative Assembly was the resolution discussed earlier that requested the Legislative Council conduct a study on the delivery of education. The study, conducted by the Education Committee, was done between the Fifty-seventh and Fifty-eighth Sessions of the Legislative Assembly. The results of the study appear in the 2003 *Report of the North Dakota Legislative Council*.

House Concurrent Resolution No. 3061 directed a study of elementary and secondary education during the ensuing 5, 10, and 20 years, with emphasis on a review of the current school district structure, reorganization options, the potential for creating alternative administrative units, and the equitable distribution of state aid to school districts. (*Report of the North Dakota Legislative Council, 2003, p. 132*)

The study report, entitled "Provision of Education Study," began by providing background information on North Dakota and education, information that could prove useful to the educator, especially one new to the state or system.

Since at least the 1930s, the state has attempted to meet its constitutional directives by providing some level of financial assistance to local school districts. By the late 1950s, state support for education had evolved into the foundation aid program. During its nearly 50-year history, the program has grown to the point of providing during the 2001-03 biennium

\$49.8 million for special education, \$67.2 million for tuition apportionment, \$2.2 million for revenue supplement payments, \$35 million for teacher compensation payments, and \$473.9 million for student payments and transportation. (*Report of the North Dakota Legislative Council, 2003, p. 132*)

The report also provides useful school district demographics, demographics that are important considerations when attempting to plan for the educational needs of the state some 5, 10, or 20 years into the future.

In 1990 there were almost 117,000 students enrolled in kindergarten through grade 12 in this state. In 2002 that number had fallen to 105,214. By 2008 that enrollment is projected to be 87,912, and by 2012 the enrollment is projected to be 77,329....This decline in student numbers has affected the number of school districts. In 1918 North Dakota had 4,700 one-room schools. By the late 1940s North Dakota had 2,200 school districts. In 2001 only 222 school districts remained. Of those 222 school districts, 105 had fewer than 100 students in high school....Among the 105 high schools that enroll fewer than 100 students, only one school district offers advanced placement courses. (*Report of the North Dakota Legislative Council, 2003, p. 133*)

The study then briefly discusses different school district structures: regional service units (where districts maintain autonomy but share some services); the 62-district proposal; the 76-district proposal; and a minimum enrollment structure (where at least 225 students are enrolled in K-12). At the conclusion of the study, the Education Committee recommended the following

bills to the 2003 Legislative Assembly: House Bill No. 1033, to require that a student successfully complete at least 21 high school credits in order to receive a high school diploma; Senate Bill No. 2031, to increase the number of courses that high schools must provide for their students; and House Bill No. 1034, to require school boards to develop long-term (5, 10, and 20 years) plans. This same report by the Education Committee also includes a "Teacher Compensation Study," a "State and Local Tax Structure Study," and a "School District Transportation Study."

The Higher Education Committee of the Legislative Council conducted two studies between the legislative sessions that were also presented in the 2003 *Report of the North Dakota Legislative Council*: the "Higher Education Performance and Accountability Measures Study," and the "College Technical Education Council and Workforce Training Regions Study." The "Higher Education Performance and Accountability Measures Study" begins with a brief overview of the current status of the North Dakota University System, an overview that, again, might be useful for the educator new to the state or the system.

The North Dakota University System consists of 11 institutions under the control of the State Board of Higher Education. The system served approximately 37,656 students (headcount enrollment) during the 2000-01 academic year, which represents approximately 29,608 full-time equivalent (FTE) students. Total spending provided by the 2001 Legislative assembly for higher education institutions, including the University System office, totaled \$447,321,037, of which \$336,953,3836 was from the general fund and \$80,367,201 from special funds. The legislative

appropriations for the 11 institutions, the University System office, and the Forest Service support 3,088.39 FTE positions for the 2001-03 biennium. (*Report of the North Dakota Legislative Council, 2003, p. 213*)

The "Higher Education Performance and Accountability Measures Study" also includes a report of the accomplishments of the Higher Education Roundtable and its six task forces, a long-term financing plan and resource allocation model, a long-term enrollment management plan, and a performance and accountability report. The Higher Education Committee received the latter report from the University System Office in January 2002.

The report included information on approximately one-third of the performance and accountability measures required by the 2001 Legislative Assembly and adopted by the State Board of Higher Education. The committee reviewed the report and learned: the University System's institutions performed very well when compared to other states and national standards; the number of businesses provided employee training by North Dakota's workforce training system increased by 134 percent from fiscal year 2000 to fiscal year 2001; University System graduates exceeded the national first-time pass rate on national examinations for most professions; the University System's fall 2001 enrollment was at an alltime [*sic*] high of 37,596 students; and the University system generated approximately 62 percent of its total education-related revenue in fiscal year 2001 from tuition and fees, sales and services, grants, and gifts.

(*Report of the North Dakota Legislative Council, 2003, p. 219*)

The third and final performance and accountability report is to be published in January 2004 and will include information on all performance and accountability measures, e.g., ratio of faculty and staff to students, student graduation and retention rates, enrollment in entrepreneurship courses and the number of graduates of entrepreneurship programs.

The *Report of the North Dakota Legislative Council* is available at the following ODIN libraries and institutions: Bismarck State College; Bottineau County Public Library; Dickinson State University; Fargo Public Library; Grand Forks Public Library; Jamestown College; Lake Region State College; Mayville State University; Minot State University; North Dakota State College of Science; North Dakota State Library; North Dakota Supreme Court Library; State Historical Society; University of North Dakota Thormodsgard Law Library; and Valley City State University.

CHAPTER VII  
NORTH DAKOTA CASE LAW

Introduction

The judicial system in North Dakota is organized into a Supreme Court, a temporary Court of Appeals, district courts, and municipal courts. The North Dakota Supreme Court has five justices, each elected for a 10-year term. The Chief Justice is elected by the other justices and the district court justices. The Supreme Court has both adjudicative and administrative responsibilities.

In its adjudicative capacity, the Supreme Court is primarily an appellate court with jurisdiction to hear appeals from decisions of the district courts. All appeals from these courts must be accepted for review. In addition, the court also has original jurisdiction in matters such as certain habeas corpus cases and decisions of the secretary of state in the petition process and can issue such original and remedial writs as are necessary to exercise this authority....In its administrative capacity, the Supreme Court has major responsibilities for: ensuring the efficient and effective operation of all courts in the state, except federal and tribal courts; maintaining high standards of judicial conduct; supervising the legal profession; and promulgating procedural rules that allow for the orderly and efficient transaction of judicial business. (North Dakota Blue Book, 2001, p. 161)

The North Dakota Court of Appeals, established in 1987 to assist in the caseload of the Supreme Court, is composed of a three-judge panel. The judges are either active or retired District Court judges or retired Supreme Court justices.

The Court of Appeals may exercise appellate and original jurisdiction as delegated by the Supreme Court.... No cases were assigned to the Court of Appeals from 1994 to 1997. In 1998, 20 cases were assigned due to a heavy caseload and the retirement of Justice Meschke. Fourteen of the cases assigned were civil and six were criminal. The legislation authorizing the Court of Appeals is in effect until January 1, 2004. (North Dakota Blue Book, 2001, p. 169)

Subsequent legislation may amend the effective date.

The district courts are the trial courts and they have original and general jurisdiction over state cases. The district courts also serve as the juvenile courts in the state. In addition, the district courts serve as appellate courts for decisions from many of the state's administrative agencies. North Dakota has seven judicial districts; forty-two district court judges are assigned to serve within those seven districts. The municipal courts, the last type of courts, hear violations of municipal ordinances, with the exception of certain violations involving juveniles. There are currently eighty-two municipal judges in North Dakota. (North Dakota Blue Book, 2001)

## North Dakota Supreme Court Cases

For the purposes of this guide, the emphasis is on North Dakota Supreme Court case law. The reliance on previous court decisions is a fundamental concept in case law.

The doctrine *stare decisis*...has as its premise that courts are to adhere to judicial precedent....Researchers and the courts are expected to turn to established judicial authorities and rules of law as the foundation for formulating legal arguments and issuing opinions. Access to “case law” – the aggregate of reported cases that form a body of jurisprudence, as distinguished from statutory and administrative law – is, therefore, often crucial when one is asked to research a legal issue. (Mersky & Dunn, 2002, p. 21)

The researcher, investigating a particular legal issue, is often looking for a case on point, for an opinion or decision directly bearing on the legal issue involved. The different terms used, opinion and decision, can sometimes lead to an initial confusion.

When a court reaches a determination as to the outcome of a case, it may issue an opinion in which it states the reason for its decision. Technically speaking, the *decision* of a court only signifies the action of the court and is indicated by the words *Affirmed*, or *Reversed*, or *Remanded*, or similar words or phrases. The *opinion* provides the explanation for the decision. In actual practice, the terms *opinion* and *decision* are often used interchangeably. (Mersky & Dunn, 2002, p. 21)



When the researcher is looking for a case, the principal print resource utilized is the court reporter.

*Court reports* are compilations of judicially decided cases, most often from state and federal appellate courts, arranged according to some grouping, such as jurisdiction, court, period of time, subject matter, or significance. Today, the word “reporter” is often used synonymously with court reports. (Mersky & Dunn, 2002, p. 21)

From 1890 to 1953, North Dakota Supreme Court state cases were reported in volumes called the *North Dakota Reports*. The *North Dakota Reports* was the official reporter for the state cases until 1953. After 1953, the *North Western Reporter* (a West and now Thomson publication) is the official reporter. Since the method of citing to cases in the reporters has undergone three main changes over the years, each method is addressed separately, beginning with the earliest citation method.

#### Case Citation: 1890 to 1953

The researcher has a citation to a 1917 North Dakota case: *Kenmare School Dist. No. 28 v. Cole*, 36 N.D. 32, 161 N.W. 542 (1917). In this case a school district brought an action against school board members who had exceeded the allowed debt and tax levy limits when entering into contracts for the construction and equipment of a new school building. There are three main components to the case citation: the case name, the reporters, and the parenthetical.

#### The Case Name

The name of the case appears first and must be underlined or *italicized*.

The case name consists of the name of the first party on either side of the

“v.” In other words, if more than one plaintiff or defendant is listed in the full case name, give only the name of the first named plaintiff or the first named defendant....The case name should be followed by a comma, which is not underlined or italicized. (Sloan, 2003, p. 102)

In the *Kenmare* case, the case name is *Kenmare School Dist. No. 28 v. Cole*.

Although there were other school board members in addition to Cole (Makee and Lowe), they are not included in the case name.

#### *The Reporters*

After the case name, the citation should list information on the reporter in which the case is published....In the citation, the name of the reporter will be abbreviated....Ordinarily, you will list the volume of the reporter, the reporter abbreviation, and the starting page of the case. (Sloan, 2003, p. 103)

In the *Kenmare* case, there are two reporters listed: N.D., the abbreviation for *North Dakota Reports*, and N.W., the abbreviation for *North Western Reporter*. The listing of two (or more) reporters where a researcher can locate the same case is called a parallel citation. In *Kenmare School Dist. No. 28 v. Cole*, 36 N. D. 32, 161 N.W. 542 (1917), the case is located in volume 36 of the *North Dakota Reports* on page number 32 and is also located in volume 161 of the *North Western Reporter* on page 542.

#### *The Parenthetical*

Following the reporters, the year that the case was decided is included in parentheses. *Kenmare* was decided in 1917. The case citation ends with the parenthetical: *Kenmare School Dist. No. 28 v. Cole*, 36 N. D. 32, 161 N. W. 542

(1917). If a reporter does not identify the state of the decision (in this case North Dakota is identified as "N. D."), then the parenthetical must also include it.

#### Case Citation: 1954 to 1997

The researcher has a citation to a 1990 case: *Sailer v. Rhame Public School District No. 17*, 455 N.W. 2d 588 (N.D. 1990). This is a case concerning whether a superintendent's termination was a nonrenewal of a contract or a discharge.

There are three main components to this case citation as well: the case name, the reporter, and the parenthetical.

#### *The Case Name*

The case name in the example above is *Sailer v. Rhame Public School District No. 17*.

#### *The Reporter*

The name of the reporter in the example is the *North Western Reporter, Second Series*; the reporter is abbreviated as N.W. 2d. The volume number that appears on the spine of the reporter in the *Sailer* case is volume 455. The page number in volume 455 where the case begins is page 588.

If you are citing a specific page within the case, you will also usually cite to that page as well, using what is called a pinpoint citation. A comma should appear between the starting page and the pinpoint citation, but the pinpoint citation should not be followed by a comma. (Sloan, 2003, p. 103)

For example, if the researcher were citing language that appears on the second page of the case, the citation would include that page number as well: *Sailer v. Rhame Public School District No. 17*, 455 N.W. 2d 588, 589 (N.D. 1990).

### *The Parenthetical*

Following information on the reporter, the case citation should include a parenthetical containing the abbreviated name of the jurisdiction, the abbreviated name of the level of the court that decided the case, and the year the court issued its decision....You will notice that for the highest court in each state, the jurisdiction abbreviation is all that is necessary. This alerts the reader that the decision came from the highest court in the state; no additional court name abbreviation is necessary. (Sloan, 2003, pp. 103-04)

In *Sailer*, since the North Dakota Supreme Court, the highest court in North Dakota, heard the case, the only abbreviation needed is "N.D."

The last item to appear in the parenthetical is the year of the decision. The date when the court heard the case is not necessary in the citation; only the year of the decision is required. No comma should appear before the year. After the year, the parenthetical should be closed. (Sloan, 2003, p. 104)

*Sailer* was decided in 1990. The case citation ends with the parenthetical: *Sailer v. Rhame Public School District No. 17*, 455 N.W. 2d 588 (N.D. 1990).

### Case Citation: 1997 to Present

The researcher has a citation to a 1999 case: *Cooke v. University of North Dakota*, 1999 ND 238, 603 N.W. 2d 504. In this case an assistant professor brought a marital status discrimination action against the University of North Dakota.

### *Public Domain/Medium Neutral Citation*

In 1997, the North Dakota Supreme Court and the Court of Appeals adopted the use of a public domain/medium neutral citation format.

With the advent of electronic legal information, the economic scale of legal publishing changed significantly. A variety of courts began to report their most recent decisions on electronic bulletin board services. New vendors of legal information realized their entrance to the legal information marketplace was no longer hindered by the control of legal information by Westlaw and LexisNexis and their respective parent companies, Thomson Publishing Company and Reed-Elsevier. (Mersky & Dunn, 2003, p. 590)

The adoption by some jurisdictions of the public domain/medium neutral universal citation format brought about some significant changes. The basic citation form for the universal citation of cases includes the following components:

Case name;

Year of decision;

An identifier for the jurisdiction;

A sequential number assigned to the decision;

A notation indicating if an opinion is unreported or unpublished (U);

A paragraph number if a pinpoint citation refers to specific text [¶].

(Mersky & Dunn, 2003, p. 591)

In the 1999 North Dakota case example, the case name still comes first, and is underlined or italicized. The case name is followed by a comma: *Cooke v. University of North Dakota*, 1999 ND 238, 603 N.W. 2d 504.

Next is the year of the decision, in this case, 1999. Next is the identifier for the jurisdiction, ND for North Dakota. Note that periods are not used after the "N" and the "D."

Next is a sequential number assigned to the decision. In the *Cooke* case, the sequential number assigned is number "238." In North Dakota, the Supreme Court cases decided after 1997 are numbered sequentially. The cases begin with the number "one" starting on January first of each year. For example, in 2002 the case assigned the number "one" was *Jaskoviak*. The full citation for the case is: *Jaskoviak v. Gruver*, 2002 ND 1, 638 N.W. 2d 1. The case assigned the number "two" in 2002 was *Terry*. The full citation for the case is: *Terry v. Terry*, 2002 ND 2, 683 N.W. 2d 11. In 2003, the case assigned the number "one" was *Duemeland*. The full citation for the case is: *Duemeland v. Norback*, 2003 ND 1, 655 N.W.2d 76.

In addition, if the *Cooke* case citation included a reference to a specific paragraph number within the case, say to paragraph six, that reference would be included in the cite as follows: *Cooke v. University of North Dakota*, 1999 ND 238, ¶ 6, 603 N.W. 2d 504.

The final component of the *Cooke* citation is the familiar reference to the volume (603) and page number (504) in the *North Western Reporter, Second Series*: 603 N.W. 2d 504. Again, the full citation is as follows: *Cooke v. University of North Dakota*, 1999 ND 238, 603 N.W. 2d 504. Notice that there is no parenthetical in the public domain/medium neutral citation. Items that previously were included in the parenthetical, the jurisdiction and the year, now appear elsewhere in the citation.

## North Dakota Supreme Court Cases Availability

### *Print*

The following ODIN libraries and institutions have the *North Dakota Reports* (for cases from 1890-1953): Minot State University; North Dakota State Library; North Dakota Supreme Court Library; State Historical Society; and the University of North Dakota Thormodsgard Law Library.

The following ODIN libraries and institutions have the *North Western Reporter* (for cases from 1879 to 1941) and *North Western Reporter, Second Series* (for cases from 1942 to present): Lake Region State College; Minot State University; North Dakota Supreme Court Library; and the University of North Dakota Thormodsgard Law Library.

Check ODIN, the online catalog, as holdings, actual volumes, may vary within each library. ODIN is available online at <http://www.odin.nodak.edu>.

### *Microfiche*

The following ODIN library and institution have the *North Dakota Reports* (for cases from 1890-1953) in microfiche: North Dakota State Library and the State Historical Society.

### *Online*

The North Dakota Supreme Court opinions from 1982 to the present are available online. Retrieved May 15, 2003, from the North Dakota Supreme Court website: <http://www.court.state.nd.us/Court/Opinions.htm>.

There is an alphabetical listing of all the opinions on the website. In addition, the opinions are searchable by ND citation, by N.W.2d citation, by

Justice, and by topic. Under the topics, for example, there is an entry for “Compulsory School Attendance,” with links to ten cases on the topic:

*State v. Brewer*, 444 N.W.2d 923 (N.D. 1989)

*Van Inwagen v. Sanstead*, 440 N.W.2d 513 (N.D. 1989)

*State v. Toman*, 436 N.W.2d 10 (N.D. 1989)

*State v. Melin*, 428 N.W.2d 227 (N.D. 1988)

*State v. Dagley*, 430 N.W.2d 63 (N.D. 1988)

*State v. Anderson*, 427 N.W.2d 316 (N.D. 1988)

*State v. Lund*, 424 N.W.2d 645 (N.D. 1988)

*State v. Weldon*, 422 N.W.2d 98 (N.D. 1988)

*State v. Patzer*, 382 N.W.2d 631 (N.D. 1986)

*State v. Rivinius*, 328 N.W.2d 220 (N.D. 1982)

Many of the above cases dealt with certification of home instruction in North Dakota and were referred to in Alexander and Alexander’s *American Public School Law* text, Chapter 6, “School Attendance.”

#### Locating Cases with Digests

If the researcher begins with a cite to a case, e.g., *Cooke v. University of North Dakota*, 1999 ND 238, 603 N.W. 2d 504, then as long as the source(s) referred to in the cite can be found, the case can be located. If no citation has been provided, then the researcher can turn to the digest method of locating cases.

After cases are decided, editors for commercial publishers analyze the cases and write brief descriptive abstracts of the various points of law in the cases. These abstracts are typically referred to as *headnotes* or *digest*



*paragraphs*. Later, these descriptive paragraphs are arranged by subject and published in sets known as *digests*....Because digests are finding aids that serve as a means of locating cases by subject, they have no legal authority and are never cited as such. (Mersky & Dunn, 2002, p. 81)

*West's Dakota Digest*

If the educator wanted to locate a North Dakota case by topic, *West's Dakota Digest*, a multi-volume set, would be an important resource to consult. Dakota Territory cases, North Dakota cases, and South Dakota cases from 1867 to the present are presented in digest paragraphs and include cites to the full cases. The educator could consult the Descriptive-Word Index to the set, and from the Index locate volume four, which includes the digest topic "Colleges and Universities" and volume ten, which includes the digest topic "Schools."

Looking first at "Colleges and Universities," several subtopics might be of interest to the educator: Governing Boards and Officers; Staff and Faculty; Students; and Intercollegiate Associations. Under each of these subtopics, North Dakota cases are digested in paragraph form. The following is an example of an entry for one case:

N.D. 1999. Tenured university professor's claim against state for breach of employment contract was for "the recovery of money only" under notice of claim statute for contract actions, and therefore professor was required to present his claim to the Board of Higher Education prior to filing his action with the court. NDCC 32-12-03. *Diamond v. State ex rel. State Bd. Of Higher Educ.*, 603 N.W. 2d 66, 1999 ND 228. (4 Dak. D. 716, 2001)

From this 2001 *Dakota Digest* entry, the educator knows that this is a 1999 North Dakota case (N.D. 1999). (Notice also that the *Dakota Digest*, and other digests, do not conform to the citation formats discussed earlier). The educator can get a very quick overview of the case, can locate the relevant *North Dakota Century Code* provision (NDCC 32-12-03), and has the cite to read the case in full (603 N.W. 2d 66, 1999 ND 228). The educator can also consult the pocket-part supplement to the *Dakota Digest* to see if there are any later North Dakota cases on the topic.

Similarly, under the digest topic "Schools" in the *Dakota Digest*, there are several subtopics that might be of interest to the educator: District Liabilities; Fiscal Matters; Teachers; Pupils; and Interscholastic Associations. The following is an example of another entry:

N.D. 1996. Parents of hearing-impaired child were not entitled to have judgment amended to increase their boarding care reimbursement while child attended school for the deaf where they did not follow appropriate administrative procedures under Individuals with Disabilities Education Act (IDEA) for presenting their claim for reimbursement beyond the established rates; claim was never presented to administrative hearing officer, nor was it type of claim that dispensed with the exhaustion of administrative procedures requirement when exhaustion would be futile. Individuals with Disabilities Education Act, § 601 et seq., as amended, 20 U.S.C.A. § 1400 et seq. *Lapp v. Reeder Public School Dist. No. 3*, 544 N.W. 2d 164. (10 Dak. D. 564, 2001)

From this entry, the educator can get a quick overview of the case, can locate the relevant United States Code Annotated provision (20 U.S.C.A. § 1400 et seq.), and can access the case in full with the cite provided (544 N.W. 2d 164). Note that because this is a 1996 case, the public domain/medium neutral cite is not provided as use of that method of citation began in North Dakota in 1997.

#### *West's North Western Digest*

*West's North Western Digest* is similar in function to the *Dakota Digest*, but in addition to North and South Dakota cases, the *North Western Digest* also provides access to cases from Iowa, Michigan, Minnesota, Nebraska, and Wisconsin (the same states that are included in the *North Western Reporter*). The two main digest topics of interest to educators are "Colleges and Universities" and "Schools." An entry from "Colleges and Universities" will illustrate an additional feature of this digest.

N.D. 1992. Personal injury claim against university arising from fall on ice was barred by three-year statute of limitations under statute which limited liability of political subdivisions, even assuming correctness of claimant's contention that university had waived sovereign immunity by purchasing liability insurance. NDCC 32-12.1-10, 32-12.1-15. Olson v. University of North Dakota, 488 N.W. 2d 386. (5A N.W.D. 2d 588, 2000)

In addition to providing the brief summary of the case, the reference to the *North Dakota Century Code*, and the cite to the full case, the additional value of using digests is that they also provide references to other secondary sources. The digest entry immediately above is preceded by digest entries for other North Dakota cases (including the *Cooke* case we saw in the *Dakota Digest*; yes, there is

duplication), and digest entries for other included states, all on the same “Universities and Colleges” subtopic of “Actions.” Included in this subtopic are such actions such as medical malpractice actions against physicians and staff at a university hospital and a negligence action against a university and coaches for injuries received by athlete.

In the *North Western Digest*, at the beginning of the subtopic “Actions,” there is a section called “Library References,” which points the researcher to a parallel section in the *Corpus Juris Secundum* (“Actions,” under the topic “Colleges and Universities”). The *Corpus Juris Secundum* (C.J.S.) is a multi-volume legal encyclopedia, a secondary source, which helps explain the law and which also provides references to additional cites to cases and statutes. Both the *North Western Digest* and the *Dakota Digest* provide these useful references.

*West’s Education Law Digest & Education Law Reporter*

*West’s Education Law Digest* is a particularly useful resource for the educator and citizen doing legal research on education law. The *Education Law Digest* digests cases from those cases decided in the United States Supreme Court, the United States Courts of Appeals, the United States District Courts, and the state appellate courts. All of the case digests in the multi-volume digest are education-related and, again, two of the broad digest topics are “Colleges and Universities” and “Schools.” An example of an entry from the *Education Law Digest* follows:

N.D. 1994. Considerable deference must be afforded to school district and Department of Public Instruction (DPI) in determination of qualifications required for technical assistance positions to help and monitor teachers of

special education and orchestrate special education projects. *Lippert v. Grand Forks Public School Dist.*, 512 N.W. 2d, 89 Ed. Law Rep. 605. (20 Ed. Law. 741, 1999)

This looks familiar: the brief digest of the case and the cite to the case, where the researcher can read the case in full (512 N.W. 2d 89). But note the additional cite, the parallel cite to an additional reporter volume where the same case can also be found in full: 89 Ed. Law Rep. 605. This is a cite to *West's Education Law Reporter*, a multi-volume set that reports cases from the United States Supreme Court, the United States Courts of Appeals, the United States District Courts, and the state appellate courts. The particular appeal, of course, with using the *Education Law Digest* and the *Education Law Reporter* is that both have an education law focus, a focus that covers both K-12 and higher education.

#### Shepard's North Dakota Citations

When the researcher finds a case in a digest (e.g., *Dakota Digest*) and then reads the entire case in a reporter (e.g., *North Western Reporter*), the case itself will contain citations to numerous legal authorities, including other cases, statutes, regulations, and secondary sources.

These citations can affect the continued validity of the authorities they cite. For example, earlier cases can be reversed or overruled, or statutes can be held unconstitutional. Even if the authority remains valid, the discussion of the authority in later cases can be helpful in your research. As a consequence, when you find an authority that helps you answer a research question, you will often want to know whether the authority has been cited elsewhere, and if so, what has been said about it.

The tool that helps you do this is called a citator. Citators catalog cases and secondary sources, analyzing what they say about the authorities they cite. Some citators also track the status of statutes and regulation, indicating, for example, whether a statute has been amended or repealed. Citators will help you determine whether an authority is still “good law,” meaning it has not been changed or invalidated since it was published....The print citator most commonly used in legal research is Shepard’s Citations. (Sloan, 2003, pp. 123-24)

*Shepard’s North Dakota Citations* compiles citations to cases, constitutions, codes, court rules, and jury instructions. For example, to look for the treatment of a North Dakota case consult the *Shepard’s North Dakota Citations* (and any subsequent supplements to the bound volume) under the reporter volume and the page number of the case at hand (the cited case). Under the cited case there are lists of other cases that have referred to that case. These other cases are referred to as “citing cases.” Symbols that appear beside the citing cases indicate what the courts have done. For example, the symbol “o” (overruled) indicates that the citing case has overruled the cited case. The symbol “d” (distinguished) indicates that the citing case differs in a legally significant way from the cited case, either involving dissimilar facts or requiring a different application of law. (This may seem somewhat counterintuitive, as the word “distinguished” is also used to indicate “exemplary.”) The symbol “f” (followed) indicates that the citing case relies on the cited case as controlling or persuasive authority.

This process of updating the case (or statute) at hand is called “Shepardizing.” There are numerous sets of Shepard’s books, for example,

*Shepard's North Western Reporter Citations, Shepard's United States Citations, Shepard's Federal Statute Citations.* All serve the same basic purpose:

Legal citation services indicate the prior and subsequent history of a case, and set forth citations to other cases, law review articles, and other secondary sources that cite a particular case. Statute citators indicate subsequent legislative pronouncements that affect the validity or interpretation of a particular statute and provide references to cases and secondary sources interpreting that statute....Apart from their role as validators of authority, citation services also serve as useful research tools. To the extent that a particularly useful authority is located, other sources citing that authority may be equally (if not more) useful in preparing an argument or researching the interpretation of a statute or doctrine.

(Mersky & Dunn, 2002, p. 31)

CHAPTER VIII  
NORTH DAKOTA RULES

Introduction

The North Dakota Supreme Court not only has adjudicative responsibilities, but also administrative responsibilities.

In its administrative capacity, the Supreme Court has major responsibilities for: ensuring the efficient and effective operation of all courts in the state, except federal and tribal courts; maintaining high standards of judicial conduct; supervising the legal profession; and promulgating procedural rules that allow for the orderly and efficient transaction of judicial business. Within each area of administrative responsibility, the court has general rulemaking authority. (North Dakota Blue Book, 2001, p. 161)

Rules of court are primary sources of the law. Primary sources of law are “authoritative statements of legal rules by governmental bodies” (Mersky & Dunn, 2002, p. 10). Some of the court rules (e.g., the North Dakota Rules of Appellate Procedure and the North Dakota Rules of Civil Procedure) are in place to help ensure the smooth operation of the state’s courts. Other court rules (e.g., the Rules of the Judicial Conduct Commission and the Code of Judicial Conduct) help ensure the high standards of the judiciary. Still other court rules (e.g., the



North Dakota Rules for Professional Conduct and the North Dakota Rules for Lawyer Discipline) help ensure the high standards of the legal profession.

Court rules regulate the conduct of business before the courts. They range from purely formal details, such as the format to be followed in preparing a brief, to matters of substantial importance, such as ground for appeal, time limitations, and the types of motions and appeals which will be heard. Court rules may specify or limit available remedies and thus may affect rights in significant ways. (Berring & Edinger, 1999, p. 271)

The educator's interest in the rules of court is in the application of those court rules. For example, North Dakota Rules of Appellate Procedure, Rule 42 provides:

When an issue before a court may have become moot due to a change in circumstance, the parties shall advise the court in writing about the change in circumstance and explain why appeal of the issue should or should not be dismissed. (N.D.R. App. P. 42 (c), 2002)

In an explanatory note to Rule 42, it was noted that the above section was added to Rule 42 because the North Dakota Supreme Court generally will not consider a moot issue, that is, the court will not decide a case in which there is no longer any actual controversy. A cite to a case is then provided in the explanatory note: *Ashley Education Association v. Ashley Public School*, 556 N.W. 2d 666 (N.D. 1996).

The Ashley Education Association (AEA) appealed from a district court judgment dismissing its action to enjoin the Ashley Public School District No. 9 (Ashley) from issuing extracurricular contracts during contract negotiations....Upon questioning during oral argument, counsel for the

parties revealed that negotiations have concluded and contracts have been issued by Ashley for the 1996-97 school year. The parties concede no actual controversy remains in the case. However, both AEA and Ashley urge us to resolve the issues on appeal, claiming that this is an important case and the conflict could reoccur, if in the future, Ashley issues extracurricular assignments during negotiations with its teachers. Our law is well settled that courts cannot give advisory opinions and that an appeal will be dismissed if the issues become moot or academic so no actual controversy is left to be determined. (*Ashley Education Association v. Ashley Public School*, 556 N.W. 2d 666 (N.D. 1996))

The primary purpose of this chapter is to inform the educator or citizen where all the rules are located, whether in print or online. The North Dakota Rules for Professional Conduct and the North Dakota Rules for Lawyer Discipline are discussed at length in the “Professional Conduct and Ethics Opinions” chapter of this guide. In addition, the Canons of the Code of Judicial Conduct are set forth below.

### Code of Judicial Conduct

The *North Dakota Century Code Court Rules* volume contains the Code of Judicial Conduct. The Code of Judicial Conduct begins with a Preamble:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that governs us.

The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial

office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. (Preamble, N.D. Code Jud. Conduct, 2002-2003)

The Code of Judicial Conduct is organized into broad statements called Canons, with specific rules set forth in sections under each Canon. The following are the five Canons of the Code of Judicial Conduct:

Canon 1. A judge shall uphold the integrity and independence of the judiciary.

Canon 2. A judge shall avoid impropriety, and the appearance of impropriety in all of the judge's activities.

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

Canon 4. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity. (N.D. Code Jud. Conduct, 2002-2003)

#### North Dakota Century Code Court Rules Volume

The *Court Rules* volume of the multi-volume *North Dakota Century Code*, an unnumbered volume, contains the following state rules:

North Dakota Rules of Civil Procedure;

North Dakota Rules of Criminal Procedure;

North Dakota Rules of Appellate Procedure;

North Dakota Rules of Evidence;

North Dakota Rules of Court;  
Rule on Procedural Rules, Administrative Rules and Administrative  
Orders of the North Dakota Supreme Court;  
North Dakota Rule on Local Court Procedural Rules and Administrative  
Rules;  
Administrative Rules;  
Administrative Orders;  
Local Court Procedural and Administrative Rules;  
Admission to Practice Rules;  
North Dakota Rules of Professional Conduct;  
North Dakota Rules for Lawyer Discipline;  
North Dakota Standards for Imposing Lawyer Sanctions;  
North Dakota Code of Judicial Conduct;  
Rules of Judicial Conduct Commission;  
North Dakota Rules for Continuing Legal Education;  
and Limited Practice of Law by Law Students.

The *Court Rules* volume also includes applicable federal rules, including  
the Rules for the United States Court of Appeals for the Eighth Circuit.

#### Court Rules Availability

##### *Print*

The *Court Rules* volume is one of the volumes of the multi-volume *North  
Dakota Century Code*. The *North Dakota Century Code* is available at the following  
ODIN libraries and institutions: Altru Medical Library; Bismarck State College;  
Dickinson Public Library; Dickinson State University; Fargo Public Library;

Grand Forks Public Library; Jamestown College; Mayville State University; Minot State University; Minot State University – Bottineau; North Dakota State College of Science; North Dakota State Library; North Dakota Supreme Court Library; State Historical Society; University of North Dakota Chester Fritz Library; University of North Dakota Harley E. French Library of the Health Sciences; University of North Dakota Thormodsgard Law Library; Valley City State University and Williston State College.

*Online*

The North Dakota Rules are also available online. Retrieved May 28, 2003, from the North Dakota Supreme Court website:

North Dakota Rules of Civil Procedure:

<http://www.court.state.nd.us/Rules/civil/frameset.htm>.

North Dakota Rules of Criminal Procedure:

<http://www.court.state.nd.us/Rules/CRIMINAL/frameset.htm>.

North Dakota Rules of Appellate Procedure:

<http://www.court.state.nd.us/Rules/appellat/frameset.htm>.

North Dakota Rules of Evidence:

<http://www.court.state.nd.us/Rules/EVIDENCE/frameset.htm>.

North Dakota Rules of Court:

<http://www.court.state.nd.us/Rules/NDROC/frameset.htm>.

Rule on Procedural Rules, Administrative Rules and Administrative Orders of the North Dakota Supreme Court:

<http://www.court.state.nd.us/Rules/RPR/frameset.htm>.

North Dakota Rule on Local Court Procedural Rules and Administrative Rules:

<http://www.court.state.nd.us/Rules/LCR/frameset.htm>.

Administrative Rules:

<http://www.court.state.nd.us/Rules/Administrative/frameset.htm>.

Administrative Orders:

<http://www.court.state.nd.us/Rules/Administrative/frameset.htm>.

(same as Administrative Rules)

Local Court Procedural and Administrative Rules:

<http://www.court.state.nd.us/Rules/Local/frameset.htm>.

Admission to Practice Rules:

<http://www.court.state.nd.us/Rules/Admission/frameset.htm>.

North Dakota Rules of Professional Conduct:

<http://www.court.state.nd.us/Rules/Conduct/frameset.htm>.

North Dakota Rules for Lawyer Discipline:

<http://www.court.state.nd.us/Rules/Discipline/frameset.htm>.

North Dakota Standards for Imposing Lawyer Sanctions:

<http://www.court.state.nd.us/Rules/Standards/frameset.htm>.

North Dakota Code of Judicial Conduct:

<http://www.court.state.nd.us/Rules/Judicial/frameset.htm>.

Rules of Judicial Conduct Commission:

<http://www.court.state.nd.us/Rules/Commission/frameset.htm>.

North Dakota Rules for Continuing Legal Education:

<http://www.court.state.nd.us/Rules/CLE/frameset.htm>.

Limited Practice of Law by Law Students:

<http://www.court.state.nd.us/Rules/Limited/frameset.htm>.

CHAPTER IX  
NORTH DAKOTA ADMINISTRATIVE LAW

Introduction

Chapter 28-32 of the *North Dakota Century Code* is the Administrative Agencies Practice Act. *North Dakota Century Code* § 28-32-01 defines “administrative agency” or “agency” as meaning:

[E]ach board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. (N.D. Cent. Code § 28-32-01 (1991 & 2001 Supp.))

Those boards, bureaus, commissions, and departments that are considered to be administrative agencies are listed in the *North Dakota Administrative Code*.

Administrative agencies have lawmaking power by virtue of the rulemaking power granted to them by the legislature. Thus, administrative rules have the force of law unless they are beyond the delegated power or are unconstitutional.

The North Dakota Administrative Code

The *North Dakota Administrative Code* is the subject arrangement, the codification, of the rules of the state administrative agencies. The state



administrative agencies include such boards, bureaus, commissions, and departments as: Superintendent of Public Instruction (Title 67); Education Standards and Practices Board (Title 67.1); Board of Public School Education (Title 68); and the Board of the Trustees of the Teachers' Fund for Retirement (Title 82). The North Dakota State Board of Higher Education is not an administrative agency as defined by *North Dakota Century Code* § 28-32-01.

North Dakota Constitution Article VIII, Section 6 provides for the establishment of the Board of Higher Education and *North Dakota Century Code* Chapter 15-10 provides for the powers of the Board.

The *North Dakota Administrative Code*, a multi-volume loose-leaf set that consists of 108 subject titles, utilizes a four-part numbering system. The first part of the number refers to the title, the second part refers to the article, the third part refers to the chapter, and the fourth part of the number refers to the section. In addition, a decimal point is sometimes used to designate material that has been inserted between consecutive numbers. *North Dakota Administrative Code* § 67.1-03-01-01 illustrates the numbering system:

Title 67.1 is Education Standards and Practices Board.

Article 67.1-03 is Educator's Code of Ethics.

Chapter 67.1-03-01 is Educator's Code of Ethics [same name].

Section 67.1-03-01-01 is the Preamble.

[This section provides]: Preamble. The educator recognizes that education preserves and promotes the principles of democracy. The educator shares with all other citizens the responsibility for the development of educational policy. The educator acts on the belief that the quality of

services of the education profession directly influences the nation and its citizens. The educator promotes the worth and dignity of each human being and strives to help each student realize the student's potential as a worthy, effective member of society. The educator, therefore, works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. The educator measures success by the progress each student makes toward the realization of his or her potential as an effective citizen. The educator regards the employment agreement as a solemn pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. The educator accepts the responsibility to practice the profession according to the highest ethical standards. The educator strives to raise professional standards to improve service and achieve conditions which attract highly qualified persons to the profession. The following code of professional conduct of the education standards and practices board governs all members of the teaching profession. A violation of this section constitutes grounds for disciplinary action which includes the issuance of a warning or reprimand or both, suspension or revocation of the license of the affected educator, or other appropriate disciplinary action. (N.D. Admin. Code § 67.1-03-01-01)

*North Dakota Administrative Code* Title 67, Superintendent of Public Instruction, provides an overview of the Department of Public Instruction in its first article, General Administration. *North Dakota Administrative Code* § 67-01-01-01 provides in part:

67-01-01-01. Organization of the department of public instruction.

1. History. From 1864 to statehood, North Dakota was served by a territorial school board and a superintendent. In 1889, section 12 of article V of the Constitution of North Dakota provided for a state superintendent of public instruction. William Mitchell was the first state superintendent. The 1890 legislative assembly enacted a provision that the superintendent of public instruction must be a holder of a teacher's certificate of highest grade issued in the state. Statutes were also enacted at that time to provide that the state superintendent of public instruction shall have general supervision of the common and secondary schools of the state and shall be an ex officio member of the board of university and school lands.
2. Superintendent. The state superintendent is an elected, constitutional officer who supervises the K-12 educational system in North Dakota. The superintendent is assisted by staff members in Bismarck and fifty-one county superintendents....
3. Fiscal management. This office is responsible for the preparation and submission of the biennial budget, department payroll, and the internal accounting system....
4. Personnel and administrative office services. This office performs the personnel services of the department and supervises the administrative areas designed to support internal, departmental functions including: Mail distribution, telephone coverage, and supply.

5. Division of school district support services. This division coordinates and supervises the administrative support services provided to school districts. (N.D. Admin. Code § 67-01-01-01)

Title 67 includes several other articles in addition to the General Administration article. Included among those articles are: Home-Based Instruction Quality Assurance, 67-06; School District Educational Services Agreement, 67-07; School District Cooperative Agreements, 67-13; Accreditation Procedures and Standards and Criteria, 67-19; Special Education, 67-23; and Remedial Elementary Summer School Program, 67-24.

#### Rulemaking Power and Public Access

The *North Dakota Century Code* has provisions that detail the rulemaking power of administrative agencies and that assure public access to administrative agency information. *North Dakota Century Code* § 28-32-02 provides:

1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.
2. In addition to other rulemaking requirements imposed by law, each agency shall include in its rules a description of that portion of its organization and functions subject to this chapter, stating the general course and method of its operation and how the public may obtain

information or make submissions or requests. (N.D. Cent. Code § 28-32-02 (1991 & 2001 Supp.))

As a helpful “finding aid,” each rule in the *North Dakota Administrative Code* cites both the section of the *North Dakota Century Code* that provides the general authority for the rule and the section of the *North Dakota Century Code* that the rule is implementing.

### Notice of Rulemaking and Hearings

The *North Dakota Century Code* also has provisions regarding how administrative agencies give notice of their rulemaking. *North Dakota Century Code* § 28-32-10 provides in part:

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
  - a. The agency’s full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule....The agency’s full notice must be filed with the office of the legislative council. and the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state.
  - b. The abbreviated newspaper publication of notice must be in display-type format with a minimum width of one column...

2. The agency shall mail a copy of the agency's full notice to each person who has made a timely request to the agency for a mailed copy of the notice. (N.D. Cent. Code § 28-32-10 (1991 & 2001 Supp.))

This same provision in the *North Dakota Century Code* includes additional requirements for the Superintendent of Public Instruction:

3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least thirty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent shall provide the group or person notice by electronic mail. (N. D. Cent. Code § 28-32-10 (1991 & 2001 Supp.))

The notices published by the administrative agencies also include information about the time and place of hearings. *North Dakota Century Code* § 28-32-11 provides in part:

The agency shall adopt a procedure to allow interested parties to request and receive notice from the agency of the date and place the rule will be

reviewed by the administrative rules committee. In case of substantive rules, the agency shall conduct an oral hearing. (N.D. Cent. Code § 28-32-11 (1991 & 2001 Supp.))

The North Dakota Legislative Council posts the notices of rulemaking hearings on their website, listed in the online availability section later in the chapter.

#### Attorney General Review of Rules

The North Dakota Attorney General must review all proposed administrative agency rules. The *North Dakota Century Code* § 28-32-14 provides:

Every rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general promptly shall furnish each such opinion. The attorney general may not approve any rule as to its legality when the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable or when the procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality. (N.D. Cent. Code § 28-32-14 (1991 & 2001 Supp.))

The North Dakota Attorney General opinions are discussed in a later chapter of this guide.

#### North Dakota Administrative Code Availability

The *North Dakota Administrative Code* includes a “Law Implemented Table” in the Index volume to the set. The “Law Implemented Table” provides a useful

cross-reference from the *North Dakota Century Code* section to the *North Dakota Administrative Code* section.

*Print*

The *North Dakota Administrative Code* is available at the following ODIN libraries and institutions: Dickinson State University; Fargo Public Library; Minot State University; North Dakota State Library; North Dakota Supreme Court Library; University of North Dakota Chester Fritz Library; and University of North Dakota Thormodsgard Law Library.

*Online*

The *North Dakota Administrative Code* is available online. Retrieved May 19, 2003, from the North Dakota Legislative Council website:

<http://www.state.nd.us/lr/information/rules/admincode.html>.

Access to an alphabetical list of North Dakota agencies is available online. Retrieved May 19, 2003, from the Discover North Dakota website:

<http://discovernd.com/government/agencies-alpha.html>.

Access to an entity grouping of North Dakota agencies, departments, and commissions is also available online. Retrieved May 19, 2003, from the Discover North Dakota website: <http://discovernd.com/government/agencies-entity.html>.



CHAPTER X  
PROFESSIONAL CONDUCT AND ETHICS OPINIONS

Introduction

Educators have a code of professional conduct. In North Dakota, the educator's code of ethics is found in the *North Dakota Administrative Code* § 67.1-03-01. Lawyers also have a code of professional conduct.

Codes of conduct developed by the American Bar Association [ABA] have governed the conduct of lawyers since the *Canons of Professional Ethics* was first adopted in 1908. In 1969 the *Model Code of Professional Responsibility* replaced the *Canons*. The 1969 *Model Code* was widely adopted by the states. In 1983, the *Model Rules of Professional Conduct* was promulgated.... Enforcement of these rules and the power to discipline lawyers and judges is the responsibility of the state legislature or the highest court in the state; the ABA, as a voluntary association, has no such authority. (Mersky & Dunn, 2002, p. 447)

North Dakota, after making modifications, adopted the *Model Rules of Professional Conduct* in January 1988. In 1997, the American Bar Association formed the Ethics 2000 Commission to review the *Model Rules of Professional Conduct*. The current *Model Rules of Professional Conduct* with all amendments through August 2002 is available online via the American Bar Association

website. Retrieved May 24, 2003, from the American Bar Association website:  
[http://www.abanet.org/cpr/mrpc/mrpc\\_home.html](http://www.abanet.org/cpr/mrpc/mrpc_home.html).

The North Dakota Joint Committee on Attorney Standards is undertaking a review of the revised model rules. The North Dakota Joint Committee on Attorney Standards is composed of seven members (including two lay members) who are appointed by the Chief Justice of the North Dakota Supreme Court in consultation with the Supreme Court, and an additional seven members (also including two lay members) who are appointed by the Board of Governors of the State Bar Association of North Dakota. The Joint Committee on Attorney Standards is charged with studying and reviewing issues concerning attorney standards and supervision. Such issues include the Code of Professional Responsibility, admission to the state bar, attorney discipline, and the limited practice of law by law students. The committee meeting minutes from 1997 to the present are available via the North Dakota Supreme Court website.

Retrieved May 24, 2003, from the Supreme Court website:

[http://www.court.state.nd.us/Court/Committees/Jt\\_ASC/Committee.htm](http://www.court.state.nd.us/Court/Committees/Jt_ASC/Committee.htm).

#### North Dakota Rules of Professional Conduct

The *North Dakota Century Code* Court Rules volume contains the North Dakota Rules of Professional Conduct. The Rules of Professional Conduct are organized into nine broad areas: client-lawyer relationship; counselor; advocate; transactions with persons other than clients; law firms and associations; public service; information about legal services; maintaining the integrity of the profession; and miscellaneous (e.g., how to cite to the rules). The Preamble to the Rules of Professional Conduct addresses the lawyer's responsibilities:

A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, the lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests. A lawyer acts as evaluator by examining a client's legal affairs and reporting about them to the client and to others....A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public system are usually harmonious...In the nature of practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an upright person while earning a satisfactory living. The Rules of Professional Conduct prescribe terms for resolving such conflicts. (Preamble, N.D.R. Prof. Conduct, 2002-2003)

#### North Dakota Rules of Professional Conduct Availability

##### *Print*

The North Dakota Rules of Professional Conduct are contained in the Court Rules volume, an unnumbered volume, of the *North Dakota Century Code*.

The *North Dakota Century Code* is available at the following ODIN libraries or institutions: Altru Medical Library; Bismarck State College; Dickinson Public Library; Dickinson State University; Fargo Public Library; Grand Forks Public Library; Jamestown College; Mayville State University; Minot State University; Minot State University – Bottineau; North Dakota State College of Science; North Dakota State Library; North Dakota Supreme Court Library; State Historical Society; University of North Dakota Chester Fritz Library; University of North Dakota Harley E. French Library of the Health Sciences; University of North Dakota Thormodsgard Law Library; Valley City State University and Williston State College.

#### *Online*

The North Dakota Rules of Professional Conduct are available online. Retrieved May 24, 2003, via the North Dakota Supreme Court website:  
<http://www.court.state.nd.us/Rules/Conduct/frameset.htm>.

#### North Dakota Rules for Lawyer Discipline

The *North Dakota Century Code* Court Rules volume also contains the North Dakota Rules for Lawyer Discipline. The North Dakota Rules for Lawyer Discipline are organized into six broad areas: scope; organization; general procedure; disciplinary procedures; disability procedure; and miscellaneous.

The first broad area (Scope) contains Rule 1.2 of the North Dakota Rules for Lawyer Discipline. Rule 1.2, Grounds for Discipline, provides:

A. Grounds for Discipline. A lawyer may be disciplined for the following misconduct:

- (1) Violating or attempting to violate the North Dakota Rules of Professional Conduct, assist or induce another to do so, or do so through the acts of another;
- (2) Committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;
- (3) Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;
- 4) Stating or implying an ability to influence improperly a government agency or official;
- (5) Violating a provision of the canons governing judicial conduct adopted by the court;
- (6) Assisting a judge or judicial officer in conduct in violation of canons of judicial conduct or other law;
- (7) Willfully failing to appear before the court, board, or district inquiry committee when required to do so;
- (8) Engaging in conduct prejudicial to the administration of justice, including willful violation of a valid order of the court or board imposing discipline, or willfully failing to respond to a lawful demand from a disciplinary authority, except that this rule does not require disclosure of information otherwise protected by applicable rules of privilege or confidentiality;
- (9) Violating any condition attached to a certificate of admission [to practice law in the state];

(10) Violating a duty specified in Section 27-13-01 [Duties of attorneys] of the North Dakota Century Code; or

(11) Committing any act specified in Section 27-14-02 [Causes for suspension or revocation of certificate of admission to bar] of the North Dakota Century Code as a cause for suspension or disbarment.

B. Exception. A lawyer who acts with good faith and reasonable reliance in a written opinion or advisory letter of the ethics committee of the association is not subject to sanction for violation of the North Dakota Rules of Professional Conduct as to the conduct that is the subject of the opinion or advisory letter. (N.D.R. Lawyer Discipl., 2002-03)

#### North Dakota Rules for Lawyer Discipline Availability

##### *Print*

North Dakota Rules for Lawyer Discipline are also contained in the Court Rules volume of the *North Dakota Century Code*. The *North Dakota Century Code* is available at the following ODIN libraries or institutions: Altru Medical Library; Bismarck State College; Dickinson Public Library; Dickinson State University; Fargo Public Library; Grand Forks Public Library; Jamestown College; Mayville State University; Minot State University; Minot State University – Bottineau; North Dakota State College of Science; North Dakota State Library; North Dakota Supreme Court Library; State Historical Society; University of North Dakota Chester Fritz Library; University of North Dakota Harley E. French Library of the Health Sciences; University of North Dakota Thormodsgard Law Library; Valley City State University and Williston State College.

### Online

The North Dakota Rules for Lawyer Discipline are also available online.

Retrieved May 24, 2003, via the North Dakota Supreme Court website:

<http://www.court.state.nd.us/Rules/Discipline/frameset.htm>.

Code of Judicial Conduct and Rules of the Judicial Conduct Commission

The *North Dakota Century Code* Court Rules volume also contains the North Dakota Code of Judicial Conduct. The Code of Judicial Conduct was discussed in Chapter VIII of this guide and referred to the five Canons of the Code of Judicial Conduct:

Canon 1. A judge shall uphold the integrity and independence of the judiciary.

Canon 2. A judge shall avoid impropriety, and the appearance of impropriety in all of the judge's activities.

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

Canon 4. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity. (N.D. Code Jud. Conduct, 2002-2003)

The *North Dakota Century Code* Court Rules volume also contains the Rules of the Judicial Conduct Commission. The seven-member Judicial Conduct Commission may appoint a disciplinary counsel that shall:

[R]eceive and screen complaints, refer complaints to other agencies when appropriate, conduct investigations, notify complainants about the status

and disposition of their complaints, make recommendations to the commission on the disposition of complaints after investigation, file formal charges when directed to do so by the commission, prosecute formal charges and file notices of exceptions to the findings, conclusions, recommendations for sanctions or orders of dismissal of hearing panels.

(R. Jud. Conduct Comm., 2002-2003)

In the Terms section at the beginning of the Rules of the Judicial Conduct Commission, the term "complaint" is defined:

"Complaint" means information in any form from any source received by the commission which alleges or from which a reasonable inference can be drawn that a judge committed misconduct or is incapacitated and includes disciplinary counsel's written statement of the allegations if there is no written complaint from another person. (R. Jud. Conduct Comm., 2002-2003)

Rule 27 of the Rules of the Judicial Conduct Commission states the following:

Compliance with a written advisory letter or formal opinion issued by the Judicial Ethics Advisory Committee of the Judicial Conference is evidence of good faith for consideration in any sanction decision pursuant to a disciplinary proceeding. (R. Jud. Conduct Comm., 2002-2003)

The Judicial Ethics Advisory Committee serves to advise judges on the rules. A recent Advisory Letter issued from the Judicial Ethics Advisory Committee concerned the conduct of judicial candidates during judicial



elections. The text of the Advisory Letter is available online:

[http://www.ndcourts.com/Court/Committees/jud\\_ethc/canlet.htm](http://www.ndcourts.com/Court/Committees/jud_ethc/canlet.htm).

North Dakota Code of Judicial Conduct  
and Rules of the Judicial Conduct Commission Availability

*Print*

The North Dakota Code of Judicial Conduct and Rules of the Judicial Conduct Commission are contained in the Court Rules volume of the *North Dakota Century Code*. The *North Dakota Century Code* is available at the following ODIN libraries or institutions: Altru Medical Library; Bismarck State College; Dickinson Public Library; Dickinson State University; Fargo Public Library; Grand Forks Public Library; Jamestown College; Mayville State University; Minot State University; Minot State University – Bottineau; North Dakota State College of Science; North Dakota State Library; North Dakota Supreme Court Library; State Historical Society; University of North Dakota Chester Fritz Library; University of North Dakota Harley E. French Library of the Health Sciences; University of North Dakota Thormodsgard Law Library; Valley City State University and Williston State College.

*Online*

The North Dakota Code of Judicial Conduct is available online. Retrieved May 28, 2003, via the North Dakota Supreme Court website:

<http://www.ndcourts.com/Rules/Judicial/frameset.htm>. The Rules of the Judicial Conduct Commission are also available online. Retrieved May 28, 2003, via the North Dakota Supreme Court website:

<http://www.ndcourts.com/Rules/Commission/frameset.htm>.

## State Bar of North Dakota Ethics Opinions

The Ethics Committee of the State Bar Association of North Dakota is the committee and association referred to in North Dakota Rules for Lawyer Discipline, the Rule 1.2 (B) Exception above. The Ethics Committee issues advisory opinions to North Dakota attorneys in the area of ethics and professional responsibility.

The Ethics Opinions are given a four-digit number, with the first two digits representing the year the opinion was issued and the last two digits representing the sequential number assigned to the opinion. For example, the first Ethics Opinion issued in the year 2001 was given the number 01-01; the second Ethics Opinion issued in 2001 was given the number 01-02.

The Ethics Opinions address a wide variety of concerns. Although the opinions do not specifically address K-12 or higher education issues, the following examples illustrate the wide variety of issues that are addressed.

The Ethics Committee received a request for an opinion with respect to “the lawyer’s duties to release psychological records to a client when the psychologist requests the lawyer not to release the records to the client” (State Bar Association of North Dakota, Ethics Committee, Opinion No. 97-12).

The Ethics Committee received a request for an opinion with respect to whether a law firm should “be disqualified from representing a client if that firm hires a secretarial employee from a law firm which represents a party with adverse interests to the client and there is pending litigation between the parties” (State Bar Association of North Dakota, Ethics Committee, Opinion No. 98-01).

The Ethics Committee received a request for an opinion with respect to whether an attorney “is disqualified from representing a plaintiff in a medical malpractice action against a doctor who was named as a shareholder in a corporation previously formed by another member of the requesting attorney’s law firm” (State Bar Association of North Dakota, Ethics Committee, Opinion No. 99-04).

The Ethics Committee received a request for an opinion with respect to advertising and whether “a certain telephone yellow page advertisement conforms to the requirements of North Dakota Rule of Professional Conduct 7.1(a)” (State Bar Association of North Dakota, Ethics Committee, Opinion No. 00-03).

The Ethics Committee received a request for an opinion with respect to “the scope of activities that may be performed by a suspended lawyer” (State Bar Association of North Dakota, Ethics Committee, Opinion No. 01-02).

#### State Bar of North Dakota Ethics Opinions Availability

##### *Print*

The State Bar of North Dakota Ethics Opinions are available from the following ODIN libraries: North Dakota Supreme Court Library and the University of North Dakota Thormodsgard Law Library. In addition, the *Gavel*, the journal published by the State Bar Association of North Dakota, includes summaries of the Ethics Opinions. The *Gavel* is available at the following ODIN libraries and institutions: Bismarck State College; Lake region State College; North Dakota State Library; North Dakota Supreme Court Library; and the University of North Dakota Thormodsgard Law Library.

*Online*

The State Bar of North Dakota Ethics Opinions are available online.

Retrieved May 24, 2003, from the State Bar of North Dakota website:

<http://www.sband.org/Ethics>. The website includes an Ethics Committee Opinions Index arranged under the following broad topic areas: Client-lawyer Relationship; Counselor; Advocate; Transactions with Others; Law Firms and Associations; Public Service; Information About Legal Services; and Maintaining the Integrity of the Profession.

## CHAPTER XI

### NORTH DAKOTA ATTORNEY GENERAL OPINIONS

#### Introduction

The office of the North Dakota Attorney General is provided for in the North Dakota Constitution. North Dakota Constitution Article V, Section 2 provides in part:

The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance commissioner, three public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer....The powers and duties of the ....attorney general....must be prescribed by law. (N.D. Const. Art. V, § 2)

The powers and duties of the North Dakota Attorney General are set out in *North Dakota Century Code* § 54-12-01 which provides in part:

54-12-01. Attorney general – Duties. The attorney general shall:

1. Appear for and represent the state before the supreme court in all cases in which the state is interested as a party;
2. Institute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer....

8. Give written opinions, when requested by either branch of the legislative assembly, upon legal questions....

19. Give written opinions to public entities as defined in subdivisions a or b of subsection 12 of section 44-04-17.1, when requested by an interested person under section 44-04-21.1 (N. D. Cent. Code § 54-12-01 (2001))

The “public entities” to which the Attorney General shall give written opinions when requested are defined as:

“Public entity” means all:

a. Public or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or any task force or working group created by the individual in charge of a state agency or institution, to exercise public authority or perform a governmental function;

b. Public or governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state and any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor, resolution, ordinance, rule, bylaw, or executive order of the chief executive authority of a political subdivision of the state to exercise public authority or perform a governmental function;

c. Organizations or agencies supported in whole or in part by public funds, or expending public funds. (N.D. Cent. Code § 44-04-17.1 (2001))

## Formal and Letter Opinions

The public entities and individuals to whom the Attorney General will issue written legal opinions are listed specifically on the Attorney General's website: state officers; state agencies; either branch of the state legislature; county state's attorneys; city attorneys; city governing bodies; water resource boards; and soil conservation districts.

Since 1981, Attorney General opinions have been issued in both formal and letter formats. Attorney General opinions have the same legal effect regardless of the format in which they are issued. Attorney General opinions do not have the force and effect of law. However, they do protect a public official who follows them from liability even if a court would later disagree with the Attorney General's opinion. (Retrieved May 22, 2003, from the North Dakota Attorney General website:

<http://www.ag.state.nd.us/opinions/Opinions.htm>.)

An examination of both formats, formal and letter, reveals that there is little difference between the two beyond organizational presentation. The formal opinions are organized into four main sections labeled Question(s) Presented, Attorney General's Opinion, Analysis, and Effect. The Effect section remains the same for all opinions; it states that the opinion is issued pursuant to North Dakota Century Code § 54-12-01 and that the opinion governs the actions of public officials until the issue is decided by the courts. The letter opinions begin with "Thank you for your letter asking if/whether..." The letter opinions also include the question(s) presented, the Attorney General's Opinion, the

analysis, and the effect, although none are formally labeled. Recall that the opinions have the same legal effect regardless of their format.

The formal and letter format opinions include the letter "F" or the letter "L" in their numeration. For example, the first formal opinion issued for 2003 was numbered 2003-F-01; the second formal opinion was numbered 2003-F-02. Similarly, the first letter opinion issued for 2003 was numbered 2003-L-01; the second letter opinion was numbered 2003-L-02.

*Formal Opinion 2001-F-02*

*Question Presented*

The question presented was "whether parents in a bordering state may privately pay tuition to a North Dakota public school district so their children may attend school in the North Dakota school district" (2001 N.D. Op. Att'y Gen. No. F-02).

*Attorney General's Opinion*

The Attorney General's Opinion as stated in the opinion:

It is my opinion that a North Dakota school district may not accept a student from a bordering state unless there is in place either a reciprocal master agreement between the Superintendent of Public Instruction and the appropriate officer or board in the bordering state or there is an agreement between the North Dakota school district and the school district in which the student resides. It is my further opinion that North Dakota law does not require that the tuition payments made on behalf of a nonresident student must be paid by any particular individual or from any particular source of funds. (2001 N.D. Op. Att'y Gen. No. F-02)



## *Analysis*

In the analysis of the question presented, both case law and statutory law are discussed.

The North Dakota Supreme Court “has often said that school boards have only such powers expressly or impliedly granted by statute.” Fargo Educ. Ass’n v. Fargo Pub. Sch. Dist., 291 N.W.2d 267,271 (N.D. 1980). North Dakota public schools are under legislative control and the rule of strict construction applies to defining the powers of school officials....Statutory authority permitting a student residing in another state to attend school in a North Dakota public school district is found at N.D.C.C. § 15-40.2-10....The only permission granted to a North Dakota school district allowing it to accept students from other states is either through the terms of a reciprocal master agreement negotiated by the Superintendent of Public Instruction or through an agreement that the North Dakota school district has reached with a school district in a bordering state. In neither instance is a North Dakota school district allowed to accept a student from another state without either complying with the terms of a reciprocal master agreement or without *[sic]* having first obtained the agreement of the school district in which the child resides....The issue of who is liable to pay the tuition, however, is an open topic....Whether the bordering state’s school district, the bordering state government, or the student’s parents are responsible for payment of the North Dakota tuition is a matter North Dakota law leaves to the bordering state’s laws and constitution. (2001 N.D. Op. Att’y Gen. No. F-02)

## *Effect*

The Effect as stated in the opinion:

“This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts” (2001 N.D. Op. Att’y Gen. No. F-02).

### *Letter Opinion 2003-L-15*

Letter opinions address the person requesting the opinion and utilize a letter format:

Dear Dr. Sanstead [Superintendent of Public Instruction]:

Thank you for your letter asking whether a van that does not conform to school bus standards contained in your department’s administrative rules may be used by a public or private school to transport children to and from school or school-related activities. (2003 N.D. Op. Att’y Gen. No. L-15)

In the analysis of the question presented, both case law and administrative law are discussed.

State law defines “schoolbus” as follows:

“Schoolbus” means any motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or to and from school-related activities, or privately owned and operated for compensation for the transportation of children to or from school or to or from school-related activities. N.D.C.C. § 39-01-01(67) ...N.D.C.C. § 39-21-27.1. This section authorizes you to adopt administrative rules, issue orders prohibiting operation of non-complying vehicles, and impose

sanctions upon school districts operating non-complying buses. You implemented that authority by adopting N.D.A.C. ch. 67-12-01, Standards for Schoolbuses. Those rules provide that all public schoolbuses operated in North Dakota must meet the minimum body and chassis standards established or referenced in the chapter. N.D.A.C. § 67-12-01-01 (emphasis added). The rules apply to buses manufactured after January 1, 2000....Section 39-21-27.1, N.D.C.C., authorizes you to issue orders prohibiting any party, including private schools, from using a schoolbus that does not comply with your department's rules. However, the rules that have been adopted are limited to schoolbuses operated by public schools. (2003 N.D. Op. Att'y Gen. No. L-15)

The letter opinion ends with the Attorney General's Opinion as part of the letter to Dr. Sanstead:

It is therefore my opinion that a van used to transport children to and from school or school-related activities which you find does not comply with the minimum standards adopted in your administrative rules may not be used by a public school district, whether it is owned by the district or operated under contract pursuant to N.D.C.C. §§ 15.1-30-06 through 15.1-30-12. Vehicles used by private schools are not required to comply with your department's standards. (2003 N.D. Op. Att'y Gen. No. L-15)

#### Open Records and Meetings Opinions

The "interested person" who may request an Attorney General's opinion is defined as:

Any interested person may request an attorney general's opinion to review a written denial of a request for records under section 44-04-18, a denial of access to a meeting under section 44-04-19, or other alleged violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 by any public entity other than the legislative assembly or any committee thereof. A request made under this section must be made within thirty days of the alleged violation. (N.D. Cent. Code § 44-04-21.1 (2001))

A citizen, the interested person, can make a direct request for an opinion on an alleged violation of the open meetings or open records law. The opinion will be issued to the public entity that allegedly violated the open meeting or open records provisions. These opinions include the letter "O" in their numeration. For example, the first Open Records and Meetings Opinion issued for 2003 was numbered 2003-O-01; the second opinion issued was numbered 2003-O-02. Somewhat similar to the formal opinions, the open records and meetings opinions have identifiable sections: Citizen's Request for Opinion; Facts Presented; Issues; Analyses; Conclusions; and if needed, Steps Needed to Remedy Violation.

*Open Records and Meetings Opinion 2002-O-12*

*Citizen's Request for Opinion*

On October 8, 2002, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Senator Ben Tollefson asking whether the State Board of Higher Education violated N.D.C.C. § 44-04-19 by failing to make the meeting accessible to the public, and whether it violated N.D.C.C. §

44-04-20 by failing to properly notice the meeting. (2002 N.D. Op. Att'y Gen. No. O-12)

*Facts Presented*

The facts presented in this opinion were as follows:

The State Board of Higher Education (Board) held a regular meeting in September 26 and 27, 2002, on the campus of Williston State College in Williston, North Dakota. Notice of the meeting was filed with the Secretary of State's office. The notice was also posted at the North Dakota University System office, at the meeting room on the college campus on the day of the meeting, and on the university system's website.

Additionally, the notice was mailed to approximately sixty media outlets and other entities who have requested notice of meetings. One of the items on the Board's agenda was a proposal recommended by Minot State University to rename the auditorium in Old Main to the Ann Nicole Nelson Hall. (2002 N.D. Op. Att'y Gen. No. O-12)

*Issues*

There were two issues presented in this opinion:

1. Whether the State Board of Higher Education provided proper notice of the September 26 and 27, 2002 meeting in compliance with N.D.C.C. § 44-04-20.
2. Whether the State Board of Higher Education's meeting was accessible to the public in compliance with N.D.C.C. § 44-04-19. (2002 N.D. Op. Att'y Gen. No. O-12)

## *Analyses*

Both of the two issues presented to the Attorney General for an opinion were analyzed.

*Issue one.* Public notice must be given in advance of all meetings of a public entity....Under N.D. Const. Art. VIII, § 6 and N.D.C.C. § 15-10-01, the Board is the multimember body responsible for making decisions on behalf of the University System, and is therefore a "public entity." For state-level bodies, notice must be filed in the Secretary of State's office, and must be posted at the principal office of the governing body and at the location of the meeting on the day of the meeting. The notice must contain the date, time, and location of the meeting and the topics to be discussed at the meeting....A notice of the meeting is not required to be published unless there is a specific law requiring the notice to be published, or the public entity has decided to publish the notice....In this case, the notice of the September 26 and 27 meeting was filed with the Secretary of State's office. It was also posted at the University System's office in Bismarck and at the location of the meeting on the Williston State College campus. Additionally, the notice was posted on the University System's website and mailed to media outlets and other entities who requested individual notice. There is no state law requiring notice of the Board's meetings to be published, and, according to the Board's attorney, the Board has not decided to publish notice of its meetings. (2002 N.D. Op. Att'y Gen. No. O-12)

*Issue two.* All meetings of a public entity must be open to the public unless otherwise specifically provided by law....To be open to the public, the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting....Senator Tollefson contends that the public was denied access to the Board's meeting because the Board considered and approved a name change of a Minot State University auditorium at the meeting in Williston. His position is that anyone from Minot who wanted to attend the meeting would have had to travel 120 miles to Williston. Senator Tollefson contends that the time and expense necessary to travel to the meeting prohibited Minot residents from attending the Board's meeting and voicing their position in changing the name of the auditorium....In this case, the Board has statewide jurisdiction. Its headquarters, like many agencies and boards, are in Bismarck. As an entity with statewide jurisdiction the members of the public it affects are located throughout the state. At any given meeting, the Board could potentially discuss issues affecting every college and university in the state. According to the Boards' attorney, it is the Board's practice to alternate its meeting locations among the eleven state college and university campuses. It does so not as an attempt to circumvent the open meeting laws, but, in part, to give people throughout the state an opportunity to easily appear before the Board. (2002 N.D. Op. Att'y Gen. No. O-12)

### *Conclusions*

The opinion ends with two conclusions that express the Attorney General's opinions on the two issues presented.

1. It is my opinion that the State Board of Higher Education provided proper notice of its September 26 and 27, 2002, meeting in compliance with N.D.C.C. § 44-04-20.
2. It is my opinion that the State Board of Higher Education's meeting was accessible to the public in compliance with N.D.C.C. § 44-04-19. (2002 N.D. Op. Att'y Gen. No. O-12)

### Attorney General Opinions Availability

#### *Print*

The North Dakota Attorney General Opinions are available at the following ODIN libraries and institutions: Dickinson State University; Jamestown College; North Dakota State Library; State Historical Society; University of North Dakota Chester Fritz Library; University of North Dakota Thormodsgard Law Library; and Valley City State University.

#### *Online*

The North Dakota Attorney General Opinions, from 1993 to the present, are available online. Retrieved May 26, 2003 from the North Dakota Attorney General website: <http://www.ag.state.nd.us>.



## CHAPTER XII

### SUMMARY AND RECOMMENDATIONS

#### Study Summary

As explained in the introductory chapter to the study, at the present time there is no guide to legal research in North Dakota. The North Dakota educator and citizen who needs to research legal questions or issues that impact their professional or personal lives might benefit from such a guide. This study is intended to provide a guide to North Dakota legal research for the educator and citizen.

The methodology chapter, Chapter II, detailed how legal research guides from contiguous states were reviewed. In addition, selected legal research monographs and periodicals and education law monographs and periodicals were reviewed. The resulting guide, introduced in Chapter III, examined both primary and secondary sources of the law. In addition, the sources of law were illustrated throughout with K-12 and higher education-related materials.

The secondary sources of the law were addressed first, in Chapter IV. Secondary sources were addressed first because they are the type of resource that helps to locate the law and helps to explain the law. Examples of legal periodicals (e.g., law review, bar association journal, and legal newsletter) were illustrated with specific North Dakota K-12 and higher education-related materials. Legal encyclopedias, treatises, and loose-leaf services were also

discussed and examples of North Dakota education-related materials were utilized to demonstrate the value of those resources for the educator and citizen.

Primary sources of the law examined in this study included the North Dakota Constitution (Chapter V), North Dakota legislation (Chapter VI), North Dakota case law, (Chapter VII), North Dakota rules of court (Chapter VIII and part of Chapter X, including the North Dakota Rules of Professional Conduct and the North Dakota Rules for Lawyer Discipline), and the North Dakota Administrative Code (Chapter IX). Primary sources of law are the rules of law as authorized by governmental bodies.

The North Dakota Constitution, the state's highest primary legal authority, provides for a system of public schools, open to all children, and free from sectarian control (N.D. Const. Art VIII, § 1). Educators and citizens might want to know which provisions in the North Dakota Constitution most directly relate to education. In Chapter V, the guide directed educators to Article VIII of the Constitution and individually addressed the six sections of Article VIII.

In Chapter VI, the four main categories of North Dakota legislative documents were discussed: bills, resolutions, session laws, and statutes. The *North Dakota Century Code*, the state statutes, may be familiar to many educators and citizens; the *Laws of North Dakota*, the state session laws, may be less familiar. The legislative chapter was illustrated with examples of bills, resolutions, session laws, and statutes that impacted K-12 and higher education in North Dakota.

North Dakota case law was addressed in Chapter VII. North Dakota K-12 and higher education cases were used to illustrate cases found in the *North Dakota Reports*, the *North Western Reporter*, the *North Western Reporter, Second*

*Series*, and the *Education Law Reporter*. The different methods of case citation were discussed, as was locating cases using the digest method. The *Dakota Digest*, the *North Western Digest*, and the *Education Law Digest* were also discussed and illustrated with North Dakota K-12 and higher education cases. In addition, as a means to update case law, the *Shepard's North Dakota Citations* was discussed.

Chapter VIII, the North Dakota rules chapter, primarily served to explain where the court rules are found. A particular emphasis was on the Code of Judicial Conduct.

The *North Dakota Administrative Code* was addressed in Chapter IX. Specific administrative code titles of interest to educators, such as the Superintendent of Public Instruction, were discussed. In addition, the Educator's Code of Ethics was given particular attention.

In the professional conduct and ethics opinion chapter, Chapter X, both the North Dakota Rules of Professional Conduct and the North Dakota Rules for Lawyer Discipline were examined. In addition, the advisory ethics opinions of the State Bar Association of North Dakota were addressed.

The Attorney General opinions, in Chapter XI, like the ethics opinions of the State Bar Association of North Dakota, are advisory opinions. Examples of formal, letter, and open records and meetings opinions that dealt with K-12 and higher education issues were presented.

The availability of the resources, whether primary or secondary, was also included in each chapter. Availability included the location of print resources, microfiche resources, as well as online resources.

## Discussion and Recommendations

What do educators need to know about the law to be effective in their roles? What legal issues do educators face today? A brief look at some of the professional educational organizations in North Dakota may help to reveal the variety of legal issues that educators encounter.

The North Dakota Council of Educational Leaders (NDCEL) is composed of nine affiliate associations representing the broad spectrum of educational leaders in North Dakota: the North Dakota Association of School Administrators (NDASA); the North Dakota Association of Secondary School Principals (NDASSP); the North Dakota Association of Elementary School Principals (NDAESP); the North Dakota Association of County Superintendents (NDACS); the North Dakota Association of School Business Officials (NDASBO); the North Dakota Association of Technology Leaders; the North Dakota Association of Special Education Study Council (NDSESC); the North Dakota Interscholastic Athletic Administrators Association (NDIAAA); and the North Dakota Council of Local Administrators (NDCLA).

The 2003 Summer Conference program of the North Dakota Council of Educational Leaders (NDCEL) indicates that several law-related sessions were scheduled: a panel discussion on equity, adequacy, and lawsuits; a session on special education issues as they relate to the reauthorization of the Individuals with Disabilities Education Act; a session on the No Child Left Behind Act and its Section 2413 requirements related to educational technology; a session on House Bill 1489 and its impact on becoming a highly qualified teacher in North

Dakota; and a session on conducting investigations regarding Title IX complaints of sexual harassment, abuse and discrimination.

These NDCEL sessions represent some of the legal issues that educators deal with in the schools. Citizens of North Dakota might also be interested in the same issues. Equipped with knowledge about the Individuals with Disabilities Education Act, the parent of a child with a disability can more effectively advocate for the child. Citizens from Bowman to Bismarck, aware that the No Child Left Behind Act requires a state plan for the ongoing integration of technology into all the schools, can be equally interested and invested in the plan's development.

The North Dakota Council of School Attorneys (NDCSA) is composed of attorneys who represent school districts within the state of North Dakota. The North Dakota Council of School Attorneys conducts a school law seminar in conjunction with the annual meeting of the North Dakota School Boards Association. At the most recent seminar, October 2002, the following school law issues were among those addressed: school vouchers, drug testing, mold and environmental hazards, the Internet and pornography in the classroom, teacher contracts, board member conflicts of interest, and free speech in schools.

The North Dakota Department of Public Instruction (DPI) also provides information about education-related legal issues for educators and citizens. The DPI website (<http://www.dpi.state.nd.us>) provides links to current North Dakota education legislation. The Superintendent of Public Instruction of the DPI is charged with enforcing the state statutes and federal regulations that pertain to the public schools.

At the college and university level, the State Board of Higher Education serves the eleven institutions of the North Dakota University System. The State Board of Higher Education is provided for in the North Dakota Constitution (Article VIII, Section 6); the *North Dakota Century Code* (Chapter 15-10) sets forth its statutory powers and duties. Included among those duties are the following:

Appoint and remove the president or other faculty head, and the professors, instructors, teachers, officers, and other employees of the several institutions under its control, and to fix their salaries within the limits of legislative appropriations....Adopt rules to protect the confidentiality of student records, medical records....Authorize and encourage university system entities to enter into partnerships, limited liability companies, joint ventures....Adopt rules promoting research, encouraging development of intellectual property and other inventions and discoveries by university system employees, and protecting and marketing the inventions and discoveries. (N.D. Cent. Code § 15-10-17, 1993 & 2001 Supp.)

The citizen or educator who serves on the Board will need to be prepared to deal with a wide range of legal issues (e.g., confidentiality of student records, joint liability companies, intellectual property issues). University attorneys can provide expert assistance and counsel. The North Dakota University System is an institutional member of the National Association of College and University Attorneys (NACUA), an organization that helps to educate attorneys and administrators on legal issues in higher education. The NACUA workshops,

conferences, and publications (e.g., *The Journal of College and University Law*) all serve to support the college and university attorneys in this endeavor.

Educational administration and educational leadership programs and departments at North Dakota institutions of higher education also help to prepare educators and administrators to deal with legal issues. Course offerings in school law, special education law, and higher education law can contribute greatly to the knowledge base of teachers, professors, and administrators.

The writer believes it is reasonable to expect that this guide could become a monograph used by North Dakota K-12 and higher education educators and administrators interested in teaching or learning about North Dakota legal research. The study and mastery of the legal research tools presented in this guide could assist educational leaders to make better-informed decisions about their institutional practices and procedures. Prepared with an increased knowledge of how to conduct legal research, educational leaders could better communicate with their boards, faculty, and constituencies about the reasons for some difficult decisions the leaders have had to make.

In addition, public libraries in the state might find this guide a useful resource to provide to their library patrons who are interested in researching some aspect of North Dakota law. Law firm libraries or courthouse libraries also might find that this guide is a useful tool for law clerk or employee orientation.

An informed citizenry can better serve North Dakota. The writer hopes that this guide might prove to be a useful resource for the educator and citizen.

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